8, 1940

In the Privy Council.

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.*

RECORD OF PROCEEDINGS.

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In the Privy Council.

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.*

RECORD OF PROCEEDINGS.

In the Supreme Court of Alberta.

No. 1. Statement of Claim, 16th June, 1937.

No. 1.

Statement of Claim.

1. The plaintiff is a body corporate incorporated in accordance with the provisions of the Independent Order of Foresters Consolidated Act, 3 and 4, George V (Canada), Chapter 113, being Chapter 113 of the Statutes of Canada, 1913; has its head office in the City of Toronto, in the Province of Ontario, and is duly licensed to do business in the Province of Alberta pursuant to the provisions of The Alberta Insurance Act, 1926.

2. The first named defendant is a body corporate incorporated pursuant to the provisions of the Irrigation District Act, 1915, being Chapter 13 of the Statutes of Alberta, 1915. By virtue of the provisions of the Irrigation District Act, 1920, being Chapter 14 of the Statutes of Alberta, 1920, the said defendant was continued and it was provided that it should be subject

In the Supreme Court of Alberta.

No. 1. Statement of Claim, 16th June, 1937—*continued.*

to the provisions of the said Statute as if it had been formed thereunder. The defendant Charlesworth is and since the year 1926 has been Official Trustee of the Lethbridge Northern Irrigation District, having been so appointed under and pursuant to the provisions of Section 49 of the said Irrigation District Act, 1920, and Section 55 of the Irrigation Districts Act, being Chapter 114 of the Revised Statutes of Alberta, 1922, and is added as a party defendant for the purpose of giving him notice of these proceedings, he now being deemed to be the Board of Trustees of the Lethbridge Northern Irrigation District by virtue of the above mentioned sections.

3. The first named defendant under and by virtue of the Irrigation Districts Act, 1920, being Chapter 14 of the Statutes of Alberta, was empowered, with the written assent of the Minister of Public Works for the Province of Alberta, to raise a loan upon the credit of the District and to issue debentures to secure the repayment thereof.

4. The said Statutes provided that the Minister's assent should be in writing and that when filed with the Clerk of the Executive Council should be conclusive evidence that the District has been legally formed and constituted and that all the formalities in respect to such loan and the issue of debentures therefor had been fully complied with and the legality of the issue of said debentures should be thereby conclusively established and their validity should not be questioned by any Court in the Province of Alberta, but the same should be a good and indefeasible security in the hands of any bona fides holder thereof to the full extent provided by the said Statute.

5. In compliance with all the provisions of the said Statute and with the written assent of the Minister of Public Works for the Province of Alberta, dated the 30th day of October, A.D. 1920, the first named defendant raised a loan upon the credit of the District and issued debentures to the aggregate principal amount of Five Million, Four Hundred Thousand ($5,400,000.00) Dollars, dated May 2nd, 1921, and thereby and therein promised to pay to the bearers or, if registered, to the registered owners thereof, on the first day of May, A.D. 1951, the principal amount of the said debentures in gold coin of or equivalent to the standard of weight and fineness fixed for gold coins at the date thereof by the laws of the United States of America, with interest thereon at the rate of six per cent (6%) per annum, payable half-yearly on the first day of May and the first day of November in each and every year during the currency thereof in like money according to the tenor of and upon presentation and surrender of the coupons thereto attached as the same severally become payable. It was further provided that payment of both principal and interest would be made at the holders option at the principal office of the Imperial Bank of Canada in the Cities of Toronto, Montreal or Edmonton, in the Dominion of Canada, or at the office of the Bank of Manhattan Company in the City of New York U.S.A.

6. The plaintiff, at its head office in the City of Toronto, in the Province of Ontario, is the bearer, bona fide holder and owner of debentures so issued as aforesaid in the aggregate principal amount of One Hundred and Eighty-one Thousand ($181,000) Dollars, numbered as follows :

A. 4526 to A. 4540 inclusive ;
A. 4591 to A. 4600 inclusive ;
A. 0011 ;
A. 0784 & A. 0785
A. 0882 & A. 0883
A. 0970 & A. 0971
A. 1148
A. 1275
A. 1277
A. 1279
A. 1281
A. 1408
A. 1623
A. 1943
A. 1945
A. 2006 to A. 2009 inclusive
A. 2028 to A. 2031 inclusive
A. 2042 to A. 2052 inclusive
A. 2128
A. 2133
A. 2143
A. 2151 & A. 2152
A. 2163
A. 2172
A. 2175
A. 2179 & A. 2180
A. 2182
A. 2185
A. 2188
A. 2190
A. 2193 to A. 2195 inclusive
A. 2237 to A. 2251 inclusive
A. 2258 to A. 2261 inclusive
A. 2264
A. 2272 to A. 2274 inclusive
A. 2285 to A. 2286
A. 2593
A. 2598
A. 2616
A. 2624
A. 2627 & A. 2628
A. 2638 & A. 2639
A. 2674
A. 2695

In the Supreme Court of Alberta.

No. 1. Statement of Claim, 16th June, 1937—*continued.*

A. 2761
A. 3084
A. 3086
A. 3264 to A. 3268 inclusive
A. 3271
A. 3280 & A. 3281
A. 4480 to A. 4492 inclusive
A. 4499
A. 4545
A. 4757 to A. 4760 inclusive
A. 4767
A. 4780 to A. 4783 inclusive
A. 5216 to A. 5220 inclusive
A. 5269
A. 5380 to A. 5382 inclusive
A. 1098 to A. 1102 inclusive
A. 0211 to A. 0212 inclusive
A. 1246
A. 1500
A. 1855
A. 1890
A. 2173
A. 2178
A. 2452
A. 2501 A. 2510
A. 3409
A. 3326 to A. 3333 inclusive

each of the said debentures being of the principal amount of One Thousand ($1000.00) Dollars.

7. Prior to the issue of the said debentures the first named defendant was legally formed and constituted and all the formalities in respect to such loan and the issue of debentures therefor had been fully complied with. All acts, conditions and things necessary to be done and to exist precedent to and in the issuance of the said debentures were properly fulfilled and performed and existed in regular and due form as required by the laws in force in the Province of Alberta and the Dominion of Canada and by the Bylaws and Regulations of the Lethbridge Northern Irrigation District and the said debentures are a good and indefeasible security in the hands of the plaintiff.

8. The said debentures were guaranteed as to the payment of principal and interest by the Province of Alberta, by virtue of powers conferred by the Lethbridge Northern Irrigation Districts Act, 1921, being Chapter 63 of the Statutes of Alberta, 1921, and constituted securities in which the plaintiff was by law entitled to invest.

9. On the 15th day of December, A.D. 1936, the Plaintiff presented for payment the coupons attached to the said 181 debentures owned by the

plaintiff, dated the first day of November, A.D. 1936, in the amount of Thirty ($30.00) Dollars each, totalling Five Thousand Four Hundred and Thirty ($5,430.00) Dollars to the principal office of the Imperial Bank of Canada in the City of Toronto, in the Province of Ontario, in the Dominion of Canada.

10. The said Imperial Bank of Canada refused to pay the amount of the said coupons and advised the plaintiff in writing that it held instructions from the Province of Alberta to pay only Seventeen Dollars and Fifty Cents ($17.50) for each Thirty ($30.00) Dollar coupon which fell due on the said first of November and that all it could do was to carry out the Province's instructions in that respect.

11. The plaintiff commenced an action against the defendants in the Supreme Court of Alberta, Judicial District of Edmonton (numbered 27728) on the 5th day of January, A.D. 1937, claiming as against the defendant, The Board of Trustees of the Lethbridge Northern Irrigation District, payment of the said sum of $5,430.00, together with interest thereon at the rate of six (6%) per cent., per annum until payment or judgment, together with the costs of the action.

12. The defendants, by their Statement of Defence, did not deny the allegations contained in Paragraphs 1 to 10 inclusive of the plaintiff's Statement of Claim in that action, which were the same in form as Paragraphs 1 to 10 of this Statement of Claim but the defendants pleaded that, under the provisions of the Provincial Securities Interest Act, being Chapter 11 of the Statutes of Alberta 1936 (Second Session) and the Schedules thereto, the interest on the debentures owned by the plaintiff was reduced from six (6%) per cent to three (3%) per cent, and that the full amount of the interest payable was duly tendered in accordance with the terms of the debentures and the provisions of the said Act.

13. The defendants further pleaded in their Statement of Defence in that action that Section 3, Subsection 2 of the said Act prevented the action from being brought or maintained and that the Court was without jurisdiction to try and determine the same.

14. The said action came on for trial before the Honourable Mr. Justive Ives at Edmonton on the 15th and 19th days of February A.D. 1937, and by judgment dated the 22nd day of February, A.D. 1937, and entered on the 23rd day of February, A.D. 1937, it was adjudged that the Provincial Securities Interest Act, being Chapter 11 of the Statutes of Alberta 1936 (Second Session) was *ultra vires* of the Legislature of the Province of Alberta and that the plaintiff should recover judgment against the defendant, The Board of Trustees of the Lethbridge Northern Irrigation District for the sum of $5,430.00, together with costs to be taxed on the fifth column of Schedule "C" of the tariff of costs of the Consolidated Rules of Court, Rule 27 to be excluded in the taxation thereof.

15. Notice of Appeal from the said judgment to the Supreme Court of Alberta, Appellate Division, was filed by the solicitor for the defendants on the 3rd day of March A.D. 1937.

In the Supreme Court of Alberta.

No. 1. Statement of Claim, 16th June, 1937—*continued.*

16. Subsequent to the filing of the said Notice of Appeal, the Provincial Securities Interest Act, being Chapter 11 of the Statutes of Alberta 1936 (Second Session) was repealed by the Provincial Securities Interest Act 1937 and in place of the repealed Statute there was enacted the said Provincial Securities Interest Act, 1937, the Provincial Guaranteed Securities Interest Act and the Provincial Guaranteed Securities Proceedings Act.

17. On or about the 21st day of April, A.D. 1937, after the enactment of the three Statutes mentioned in the last preceding paragraph, the defendants' solicitor abandoned the appeal from the said judgment.

18. On the 20th day of May, A.D. 1937, at the time fixed for the taxation of the costs under the said judgment, the defendants' Solicitor objected to the taxation of the said costs upon the ground that the said Provincial Guaranteed Securities Proceedings Act prohibited the taxation of the said costs and the Clerk of the Supreme Court of Alberta, Judicial District of Edmonton, ruled that the said Statute prohibited the taxation of the costs under the said judgment.

19. On the 15th day of June, A.D. 1937, a Praecipe was directed to the Clerk of the Supreme Court of Alberta, Judicial District of Edmonton by the plaintiff to issue a Writ of Execution against the defendant, the Board of Trustees of the Lethbridge Northern Irrigation District, to recover the amount of the said judgment and costs, together with the interest on the same at the legal rate from the date of the said judgment. The Clerk of the Supreme Court of Alberta, Judicial District of Edmonton, refused to issue a Writ of Execution pursuant to the said Praecipe on the ground that he was prohibited from so doing by the provisions of the Provincial Guaranteed Securities Proceedings Act.

20. The defendants have not paid and refuse to pay the amount of the said judgment and costs.

21. On or about the 11th day of May A.D. 1937, the plaintiff presented for payment the coupons attached to the 181 debentures owned by the plaintiff, dated the first day of May, A.D. 1937, in the amount of $30,00 each, totalling $5,430.00, to the principal office of the Imperial Bank of Canada in the City of Toronto, in the Province of Ontario, in the Dominion of Canada.

22. The said Imperial Bank of Canada refused to pay the amount of the said coupons and advised the plaintiff in writing that it held instructions from the Province of Alberta to pay only $15.00 for each $30.00 coupons which fell due on the said 1st day of May A.D. 1937, and that all it could do was to carry out the Province's instructions in that respect.

Wherefore the Plaintiff claims as against the defendant, the Board of Trustees of the Lethbridge Northern Irrigation District.

1. Payment of the said judgment for $5,540.00, together with the taxable costs thereunder and interest thereon at the legal rate, until payment or judgment in this action.

No. 1. Statement of Claim, 16th June, 1937—*continued.*

2. Payment of the sum of $5,430.00 in respect of the said coupons dated the 1st day of May A.D. 1937, together with interest thereon at the rate of six (6%) per cent. per annum until payment or judgment.

3. A Declaration that the Provincial Guaranteed Securities Interest Act, and the Provincial Guaranteed Securities Proceedings Act, are *ultra vires* of the Legislature of the Province of Alberta.

4. Costs of this action.

Dated at the City of Edmonton, in the Province of Alberta, this 16th day of June A.D. 1937, and delivered by Milner, Steer, Dafoe, Poirier & Martland, Royal Bank of Canada Chambers, Edmonton, Alberta, Solicitors for the Plaintiff.

Issued out of the office of the Clerk of the Supreme Court of Alberta, Judicial District of Edmonton, at the City of Edmonton, in the Province of Alberta, this 16th day of June A.D. 1937.

(Signed) R. P. WALLACE, (seal)
Clerk of the Court.

No. 2. Notice of action to Attorney General of Alberta, 18th June, 1937.

No. 2.

Notice of action to Attorney General of Alberta.

Take notice that the plaintiff, by its Statement of Claim in this action, has claimed a declaration that the Provincial Securities Interest Act, 1937, the Provincial Guaranteed Securities Interest Act and the Provincially Guaranteed Securities Proceedings Act, are *ultra vires* of the Legislature of the Province of Alberta, and take notice that, at the trial of this action, the constitutional validity of the aforementioned enactments of the Legislature of the Province of Alberta will be brought in question.

And further take notice that the plaintiff will contend, at the trial of the said action, that the said enactments are *ultra vires* of the Legislature of the Province of Alberta.

Dated at the City of Edmonton, in the Province of Alberta, this 18th day of June, A.D. 1937.

MILNER, STEER, DAFOE, POIRIER & MARTLAND
Solicitors for the Plaintiff.

To :

J. W. Hugill, K.C., M.L.A.
Attorney General of the Province of Alberta.

In the Supreme Court of Alberta.

No. 3. Statement of Defence.

No. 3.

Statement of Defence.

1. The defendants say that under the provisions of the Provincial Guaranteed Securities Interest Act, being Chapter 12 of the Statutes of Alberta, 1937, the interest on the said debentures was reduced from 6% to 3% and that the full amount of interest payable was duly tendered in accordance with the terms of the said debentures and the provisions of the said Act.

2. The defendants say that the consent of the Lieutenant Governor in Council was not obtained to the commencing of this action as required by Section 3 of The Provincially Guaranteed Securities Proceedings Act, being Chapter 11 of the Statutes of Alberta, 1937, and that this action cannot be maintained and that the Court is without jurisdiction to try and determine the same.

3. The plaintiff in a former action brought by it against the defendants in the Supreme Court of Alberta, recovered judgment against the first-named defendant in the sum of $5,430.00 for the same debt as that alleged in paragraph 1 of the prayer for relief in the Statement of Claim and the said judgment still remains in force.

4. The defendants further say that the Provincial Securities Interest Act, 1937, being Chapter 13 of the Statutes of Alberta 1937, has no application to the debts sued for herein and that the Statement of Claim herein disclosed no cause of action entitling the plaintiff to a declaration that the said Act is *ultra vires* of the Legislature of the Province of Alberta.

5. Pursuant to Rule 76 of the Rules of Court, the first mentioned defendant hereby pays into Court the sum of $2715.00, the amount tendered to the plaintiff as alleged in paragraph 1 of the Statement of Defence.

Dated at the City of Edmonton and delivered by H. J. Wilson, Solicitor for the defendant, whose address for service in this action is c/o the Department of the Attorney General, Parliament Buildings, Edmonton, Alberta.

No. 4. Reply and Joinder of Issue, 15th September, 1937.

No. 4.

Reply and Joinder of Issue.

1. The plaintiff joins issue with Paragraphs 1, 2 and 4 of the Statement of Defence.

2. In reply to Paragraph 1 of the Statement of Defence the plaintiff says that the Provincial Securities Interest Act, being Chapter 12 of the Statutes of Alberta, 1937, is ultra vires of the Legislature of the Province of Alberta, and that therefore the interest on the said debentures was not reduced as alleged in Paragraph 1 of the Statement of Defence.

No. 4.
Reply and Joinder of Issue, 15th September, 1937—*continued.*

3. In reply to Paragraph 2 of the Statement of Defence, the plaintiff says that the Provincially Guaranteed Securities Proceedings Act, being Chapter 11 of the Statutes of Alberta, 1937, is ultra vires of the Legislature of the Province of Alberta and that, therefore, the consent of the Lieutenant-Governor-in-Council for commencing this action was not necessary, that this action can be maintained without such consent and that the Court has jurisdiction to try and determine the same.

4. In reply to paragraph 3 of the Statement of Defence, the plaintiff admits that it recovered Judgment against the first named Defendant in the Supreme Court of Alberta, in a previous action in the Supreme Court of Alberta, in the sum of $5,430.00 and costs. The said first named defendant did not pay the amount of the said judgment and costs and the present action, insofar as the amount claimed in the first paragraph of the prayer in the statement of claim is concerned, is based upon the said judgment.

Dated at the City of Edmonton, in the Province of Alberta, this 15th day of September A.D. 1937, and delivered by Messrs. Milner, Steer, Dafoe, Poirier & Martland, Royal Bank of Canada Chambers, Edmonton, Alberta, Solicitors for the Plaintiff.

No. 5.
Formal Judgment, 29th October, 1937.

No. 5.

Formal Judgment.

Friday the 29th day of October, A.D. 1937.

Before the Honourable Mr. Justice Ewing at Edmonton.

This action coming on for trial on the 13th day of October, A.D. 1937, at Edmonton, before this Court at the Sittings thereof for trial of actions without a jury, in the presence of counsel for the plaintiff and counsel for the defendants, upon hearing read the pleadings and the Notice to the Attorney General of the Province of Alberta, pursuant to the Judicature Act, being Chapter 22 of the Revised Statutes of Alberta 1922, upon hearing the admissions made by the parties and upon hearing what was alleged by counsel aforesaid, this Court was pleased to direct that this action stand over for judgment, and the same coming on this day for judgment;

It is hereby ordered and declared that the Provincial Guaranteed Securities Interest Act, being Chapter 12 of the Statutes of Alberta, 1937, is ultra vires of the Legislature of the Province of Alberta;

It is further ordered and declared that the Provincially Guaranteed Securities Proceedings Act, being Chapter 11 of the Statutes of Alberta 1937, is ultra vires of the Legislature of the Province of Alberta, insofar as it relates to the subject matter of this action:

It is further ordered, adjudged, declared and directed that the Plaintiff is entitled to have its costs taxed and a Writ of Execution issued by the Clerk of the Supreme Court of Alberta, to enforce payment of the judgment

In the Supreme Court of Alberta.

No. 5. Formal Judgment, 29th October, 1937—*continued.*

of the Honourable Mr. Justice Ives in an action between this plaintiff and these defendants in the Supreme Court of Alberta, Judicial District of Edmonton, numbered 27727;

It is further ordered and adjudged that the plaintiff do recover judgment against the defendant, The Board of Trustees of the Lethbridge Northern Irrigation District, in the sum of $5,430.00, together with interest thereon at the rate of six per cent. (6%) per annum from the 1st day of May, A.D. 1937, until the date of this judgment;

It is further ordered, adjudged and directed that the defendant, The Board of Trustees of the Lethbridge Northern Irrigation District, do forthwith after the taxation thereof pay to the plaintiff its costs of and incidental to this action, such costs to be taxed on the 5th column of Schedule "C" of the Tariff of Costs of the Consolidated Rules of Court, Rule 27 to be excluded on the taxation thereof.

"R. P. WALLACE"
C.S.C.

Entered this 23rd day of
November, A.D. 1937. (Seal)

"R. P. WALLACE"
C.S.C.

No. 6. Reasons for Judgment of Mr. Justice Ewing, 1st November, 1937.

No. 6.

Reasons for Judgment of Mr. Justice Ewing.

The Plaintiff is a corporation incorporated by Special Act of the Parliament of Canada, being Chapter 113 of the Statutes of Canada 1913. The plaintiff has its Head Office in the City of Toronto in the Province of Ontario. The defendant, the Board of Trustees, is a body corporate incorporated pursuant to the provisions of the Irrigation Districts Act of the Province of Alberta. The defendant Charlesworth is the Official Trustee of the Lethbridge Northern Irrigation District appointed pursuant to the provisions of the Irrigation Districts Act and as such Trustee is deemed to be the Board of Trustees of the Lethbridge Northern Irrigation District.

In 1920 the defendant, the Board of Trustees of the Lethbridge Northern Irrigation District in the exercise of its statutory powers in that behalf, raised a loan on the credit of the District by the issue of debentures in the aggregate principal sum of $5,400,000.00. These debentures are dated May 1st, 1921, each debenture being of the principal sum of $1,000.00. By the said debentures the said Board of Trustees promised to pay to the bearers, or if registered to the registered owners thereof, on the 1st day of May, 1931, the principal amount of the said debentures in gold coin of or equivalent to the standard of weight and fineness fixed for gold coins at the date thereof by the laws of the United States of America, with interest

thereon at the rate of 6% per cent. per annum payable half yearly on the 1st day of May and the 1st day of November in each and every year during the currency thereof in like money upon presentation and surrender of the coupons attached thereto as the same severally become payable. The said debentures further provided that payment of both principal and interest would be made at the holders option at the principal office of the Imperial Bank of Canada in the cities of Toronto, Montreal or Edmonton or at the office of the Bank of Manhattan Company in the City of New York. The said debentures were guaranteed as to the payment of both principal and interest by the Province of Alberta pursuant to legislative authority in that behalf and were securities in which the plaintiff was by law entitled to invest.

Prior to the commencement of action No. 27727 on the 5th day of January, 1937, to which reference will be made later, the plaintiff became, and has since remained, the bearer and owner of 181 debentures of the said issue amounting in the aggregate to a principal sum of $181,000.00. On September 1st, 1936, the Legislative Assembly of the Province of Alberta passed the Provincial Securities Interest Act, being Chapter 11 of the Statutes for that year. The Statute which will be further referred to purported *inter alia* to reduce the rate of interest on all Provincial securities including provincially guaranteed securities by one half. The Act also prohibited the bringing of any action in any Court of the Province in respect of any such securities. On December 15th, 1937, the plaintiff presented for payment at the office of the Imperial Bank in Toronto the coupons attached to the said 181 debentures covering the half year ending November 1st, 1936. Each coupon amounted to $30.00 but the Bank informed the plaintiff that it held instructions from the Province of Alberta to pay only $17.50 on each coupon and could therefor pay only that sum. The plaintiff refused to accept the reduced sum offered and on January 5th, 1937, commenced action No. 27727 above mentioned, against these defendants to recover the sum of $5,430.00 together with interest and costs. The defendants filed a defence setting up the provisions of the above mentioned Act. The action came on for trial before Mr. Justice Ives who found the said Act to be *ultra vires* of the Provincial Legislature, and gave judgment for the amount claimed with costs. The defendants appealed from the judgment but before the appeal came on for hearing the legislature at its 1937 session, repealed the said Provincial Securities Interest Act and at the same session passed the three following Acts, viz.,

Chap. 12 " The Provincial Guaranteed Securities Interest Act"
Chap. 13 " The Provincial Securities Interest Act 1937 "
Chap. 11 " The Provincially Guaranteed Securities Proceedings Act."

The defendants thereupon abandoned their appeal but when the plaintiff's solicitor attempted to tax its costs the defendants' solicitors objected on the ground that the Provincially Guaranteed Securities Proceedings Act prohibited such a proceeding. The Clerk of the Supreme

In the Supreme Court of Alberta.

No. 6. Reasons for Judgment of Mr. Justice Ewing, 1st November, 1937—*continued.*

Court, Judicial District of Edmonton, refused to issue a Writ of Execution in respect of the said judgment on the same ground.

On May 11th, 1937, the plaintiff presented for payment the coupons which fell due on May 1st, 1937, but the Bank advised that it could pay only $15.00 for each coupon. The plaintiff thereupon commenced this action claiming, firstly; payment of the former judgment with interest; secondly; payment of $5430.00 being the amount of the coupons falling due since the former judgment; and, thirdly; a declaration that the Provincial Guaranteed Securities Act and the Provincially Guaranteed Securities Proceedings Act are ultra vires of the Provincial Legislature.

It is advisable to consider first the Provincially Guaranteed Securities Proceedings Act because the plaintiff's right to commence or carry on these proceedings depends upon the invalidity of that Act. It is argued against this Act that the Act of 1936 was declared ultra vires in its entirety and as that Act contained a clause similar in effect to the Act under consideration the latter Act cannot escape a similar declaration. It seems to me, however, that such a result does not necessarily follow. A composite Act may be declared ultra vires in its entirety but it does not follow that each of its component parts if enacted separately would necessarily be declared to be ultra vires.

It may be noted, however, in this connection that Section 3, subsection 2 of the Act of 1936 prohibited all actions in respect of securities as the same are defined in the Act. The prohibition is not confined to the enforcement of those rights of which the holder of the securities is deprived by the Act. The prohibition applies equally to the enforcement of those rights which the Act takes away as well as to those remaining rights which the Act itself asserts. This view does appear to me to lend some support to the argument that in this particular case the Statute under consideration is in no better position than was the general prohibition contained in the Act of 1936.

Section 3 of the Provincially Guaranteed Securities Proceedings Act, 1937, is as follows:

"Notwithstanding anything to the contrary in any Act or in any contract, and notwithstanding any rule of law or equity to the contrary, no action or proceeding of any kind or description shall be commenced, taken, instituted, maintained, or continued, for the purpose of the recovery of any money payable in respect of any guaranteed security, or for the purpose of enforcing any right or remedy whatsoever for the recovery of any such money, or for the purpose of enforcing any judgment or order at any time heretofore or hereafter given or made with respect to any guaranteed security, or for the purpose of enforcing any foreign judgment founded on a guaranteed security, without the consent of the Lieutenant Governor in Council."

The plaintiff in the case at bar seeks to recover from the principal debtor money payable under a guaranteed security as well as to enforce the judgment of Ives, J., given against the principal debtor with respect

to a guaranteed security. The plaintiff has not received the consent of the Lieutenant Governor in Council to commence or carry on these proceedings. Professor Dicey in his work on the Law of the Constitution, 3rd Edition, p. 57 says :

> " In Canada as in the United States the Courts *inevitably* become the interpreters of the constitution."

In the *Ottawa Valley Power Company case*, supra, Masten J.A., quotes with approval the statement of Sir John Simon :

> " It is of the essence of the Canadian Constitution that the determination of the legislative powers of the Dominion and of the Provinces, respectively, should not be withdrawn from the Judiciary."

The Courts have acted as interpreters of the Constitution since Confederation. No other arbiter has, so far as I am aware, been even suggested. If another arbiter were sought the elementary concepts of justice would exclude the parties primarily interested, namely, the Dominion and the Provinces. If either the Dominion or the Provinces be at liberty to invade at will the legislative jurisdiction of the other and give practical effect to that invasion by denying the courts the jurisdiction to declare such invasion to be unlawful, then the division of powers as contained in the B.N.A. Act is a futility. Such a result would nullify the constitution and must therefore be unconstitutional. It seems to me that this reasoning applies to all efforts by the legislature to limit the jurisdiction of a provincial court in respect of a subject matter which is not within the legislative competence of the Legislature. A somewhat similar question came before the Divisional Court of Ontario in 1909 in *Smith* v. *City of London*, 20, O.L.R. 133. In this case the plaintiff—a ratepayer of the City of London—sued the Municipality for a declaration that a certain contract made by the Municipality with the Hydro Electric Power Commission was not valid on the ground that certain Statutes on which the contract was based were ultra vires. After the action was commenced and before judgment, the Ontario Legislature passed an Act validating the contract with certain variations and declaring that " the validity of the contract as so varied as aforesaid shall not be open to question on any ground whatever in any court." The validating Act further provided that every action previously brought should be " forever stayed." Judgment was given by the Trial Judge after the validating Statute was passed and despite the statutory stay the appeal came on for hearing. Boyd C., in delivering the judgment of the Court, said :

> " The legislation contained in this series of Acts is questioned in this appeal on the special ground that it is *ultra* the provincial law-making power. And in this aspect I take it that it is open to the court, notwithstanding the wide language used as to staying the proceedings, to take cognizance of the legislative competence to deal with the whole subject matter. If the provisions of the statutes in question were found to be beyond the powers of the Provincial

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No. 6. Reasons for Judgment of Mr. Justice Ewing, 1st November, 1937—*continued.*

Legislature, it is the duty of the court, under the scheme of the British North America Act, 1867, so to adjudicate and determine."

The court found that the subject matter of the action was within Provincial competence but it is worthy of note that the stay did not prevent the court from proceeding to determine that question, and as I understand the reasons of the learned Chancellor the reason for not interfering with the stay was that the "whole subject matter" was within provincial competence.

The matter came up again in *Ottawa Valley Power Company* v. *Attorney General of Ontario* 1936, D.L.R. 468, and in appeal, 1936 4 D.L.R. 594. The Power Commission Act R.S.O. 1927, Chap. 57, required the consent of the Attorney General to an action against the Commission. A further Statute 1935, Chap. 53, Sec. 2, invalidated certain contracts made by the Commission and Sec. 3 of the same Act prohibited any action against the Commission founded on any contract invalidated by Sec. 2. Other issues were involved but the positions taken by opposing Counsel on the point which is also in issue in the case at bar, were tersely stated by Rose C.J. H.C., who presided at the trial, as follows : The plaintiffs contention was that :

"Even if Sec. 3 stood alone it would be ultra vires because a Provincial Legislature cannot under S. 92 (14) of the British North America Act or in the exercise of any other of its powers prevent access to the Courts for the enforcement of rights which it is not competent to destroy."

Defence counsel on the contrary contended :

"That a right of action is a civil right in the Provinces which can be destroyed by the Legislature and this even if the destruction of the remedial right in effect destroys a substantive right over which the Provincial Legislature has no jurisdiction."

On appeal the Court was divided, a majority favouring the allowance of the appeal, Masten J.A., gave lengthy reasons which were concurred in by Middleton J.A. Fisher J.A., wrote a separate judgment concurring in the result.

Masten J.A., summarized his conclusion as follows :

"The conclusion at which I have arrived is as follows :

(1) The general rule is clear that the administration of justice being by the B.N.A. Act committed to the Provinces the jurisdiction of the several Courts set up by the Legislature to administer justice is that which is prescribed by the Legislature. Generally speaking any statute passed by a Provincial Legislature limiting the jurisdiction of the Provincial Court is binding on it.

(2) But to that general rule I think there is this exception, viz., that the Legislature cannot destroy, usurp, or derogate from substantive rights over which it has by the Canadian

Constitution no jurisdiction and then protect its action in that regard by enacting that no action can be brought in the Courts of the Province to inquire into the validity of its legislation, thus indirectly destroying the division of powers set forth in the B.N.A. Act. In other words it cannot by such indirect means destroy the Constitution under which it was created and now exists."

Fisher J.A., expresses the view that the Statute is ultra vires because it includes actions with respect to matters over which the Province has no control but he goes further and says :

> " It has always been recognized that one of the invaluable rights of every subject of the King is an appeal to the King, and the right to seek justice in the King's Court."

Fisher J.A., also recites with apparent approval a further argument, viz., that the limitation takes away from the Supreme Court one at least of the essential characteristics of a Superior Court.

Assuming the view of Masten J.A., to be correct—and I agree with his conclusions without expressing any opinion as to the further propositions advanced by Fisher J.A.—then the question is whether or not the Act under consideration usurps or derogates from substantive rights over which the Province has no jurisdiction. It is admitted that the sum of $5430.00 claimed by the plaintiff consists entirely of interest and that the judgment referred to in the plaintiff's claim was obtained in respect of interest.

It is true that the Statute under consideration makes no express reference to interest, but, as the exclusive legislative authority of the Parliament of Canada extends to interest, it is clear that the Statute in question does in fact derogate from rights with respect to interest and therefore from rights over which the Legislature of Alberta has no jurisdiction. Moreover it appears to me that the prohibitory statute conflicts with Section 2 of The Interest Act of Canada, which provides that the lender may stipulate for and exact any rate of interest which may be agreed upon. The relationship between the plaintiff and the defendant district is that of lender and borrower. The words " exact any rate of interest which may be agreed on " is the equivalent of " exact interest at any rate of interest which may be agreed on." The prohibitory Statute clearly by its terms aims to prevent the plaintiff from " exacting " any interest whatever.

Having arrived at this conclusion it is unnecessary to consider the further question, viz., whether or not the right to payment of part of the Provincially Guaranteed Security, viz., the debenture interest is a right over which the Legislature has no jurisdiction, owing to the fact that the plaintiff's Head Office is outside the Province and the debt according to its terms is payable inter alia at Toronto in the Province of Ontario.

It is further said by counsel for the defendants that the prohibition is not absolute but operates only in case the consent of the Attorney General is not obtained. It would seem that, if the subject matter of the proceedings

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is outside the jurisdiction of the Legislature and if by reason of that fact the Legislature has no power to prohibit access to the courts at all, then it cannot prohibit such access, subject only, to the will of the Attorney General.

As far as the Provincial Guaranteed Securities Interest Act is concerned its main provisions in practically identical language are all contained in Chap. 11 of the Statutes of Alberta, 1936, which was found by Mr. Justice Ives to be ultra vires of the Provincial Legislature. (See 1937 2 D.L.R. 109), and which has since been repealed. The reasons given by Mr. Justice Ives seem to me to be sound and I concur in his conclusions. I must conclude that the Provincial Guaranteed Securities Interest Act is also ultra vires.

In the result there will be a declaration that the Provincial Guaranteed Securities Interest Act is ultra vires of the Legislature and that the Provincially Guaranteed Securities Proceedings Act insofar as it relates to the subject matter of this action is also ultra vires. There will also be a declaration that the plaintiff is entitled to have its costs taxed and a writ of execution issued by the Clerk of the Court to enforce payment of the judgment of Ives J., in action No. 27727 above referred to. The plaintiff is entitled to judgment $5430.00 and interest as prayed.

The plaintiff will have its costs of the action to be taxed according to Column 5.

A. F. Ewing,
J.S.C.

Edmonton, Alberta.
November 1st, 1937.

No. 7. Notice of Appeal, 8th November, 1937.

No. 7.

Notice of Appeal.

Take notice that the defendants (Appellants) intend to appeal and do hereby appeal to the Appellate Division of the Supreme Court of Alberta, at the next sittings of the Court to be holden at the City of Edmonton, or at such other sittings at which this appeal may lawfully be entered or heard from the judgment of the Honourable Mr. Justice Ewing, dated the 29th day of October, A.D.1937, and entered the 23rd day of November, A.D. 1937.

And further take notice that on the hearing of the said appeal the Appellants will apply for an Order setting aside the said judgment and directing that the plaintiff's action be dismissed insofar as the plaintiff's claim is in excess of the amount tendered and paid into Court by the

No. 7.
Notice of Appeal, 8th November, 1937—
continued.

defendants, and insofar as the plaintiff's claim for declarations is concerned on the following grounds :

1. That the said Judgment is contrary to law and the evidence.

2. That the Learned Trial Judge erred—

(*a*) In holding that the Provincially Guaranteed Securities Proceedings Act, being Chapter 11 of the Statutes of Alberta, 1937, is ultra vires the Provincial Legislature insofar as it relates to the subject matter of this action ;

(*b*) In holding that the Provincially Guaranteed Securities Proceedings Act conflicts with Section 2 of the Interest Act, being Chapter 102 of the Revised Statutes of Canada, 1927, and in failing to hold that the said first mentioned Act in its true pith and substance relates to and deals with property and civil rights in the Province or administration of justice in the Province, and comes within the legislative competence of the Province under sub-headings 13, 14, and 16, of Section 92 of the British North America Act ;

(*c*) In holding that the Provincially Guaranteed Securities Proceedings Act passed under the exclusive power of the legislature to legislate respecting the administration of justice cannot in any way affect or derogate from rights of action arising out of matters over which the Dominion Parliament has legislative jurisdiction ;

(*d*) In holding that the Court had jurisdiction to try and determine this action notwithstanding the fact that the consent of the Lieutenant Governor in Council had not been obtained or applied for in accordance with the provisions of the Provincially Guaranteed Securities Proceedings Act ;

(*e*) In failing to hold that Section 2 of the Interest Act of Canada as interpreted by the learned Trial Judge is ultra vires the Parliament of Canada ;

(*f*) In holding that the Provincial Guaranteed Securities Interest Act, being Chapter 12, of the Statutes of Alberta, 1937, is ultra vires the Provincial Legislature ;

(*g*) In failing to hold that the Provincial Guaranteed Securities Interest Act dealt only with the rate and amount of interest to be recovered in respect of certain kinds of contracts and as such was in its true pith and substance legislation relating to property and civil rights within the Province and was not legislation relating to interest within the meaning of sub-heading 19 Section 91 of the British North America Act.

(*h*) In failing to give full effect to the double aspect rule laid down by the Judicial Committee of the Privy Council whereby this legislation may be considered as dealing with the enforcement of individual contracts within the Province and thus within its legislative competence under " Property and Civil Rights " rather than legislation relating to interest or interest rates.

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No. 7. Notice of Appeal, 8th November, 1937—*continued.*

3. On such other grounds as may appear from the pleadings and proceedings herein.

Dated at the City of Edmonton, in the Province of Alberta, this 8th day of December, A.D. 1937.

W. S. GRAY.
H. J. WILSON.
Solicitors for the Defendants (Appellants).

To : Messrs. Milner, Steer, Dafoe, Poirier & Martland,
Solicitors for the Plaintiff (Respondent). 10

No. 8.

No. 8.

8.—Agreement as to contents of Appeal Book.

(*Not printed.*)

No. 9.

No. 9.

9.—Certificate of Clerk of the Court certifying documents and Appeal Book.

(*Not printed.*)

In the Supreme Court of Alberta (Appellate Division).

No. 10. Appellants' Factum, 7th January, 1938.

No. 10.

Appellants' Factum.

STATEMENT OF FACTS.

This is an appeal from the judgment of the Honourable Mr. Justice Ewing in which he declares the Provincially Guaranteed Securities Proceedings Act, being Chapter 11 of the Statutes of Alberta, 1937, ultra vires the Provincial Legislature insofar as it relates to the subject matter of this action; also the Provincial Guaranteed Securities Interest Act, being Chapter 12 of the Statutes of Alberta, 1937, to be ultra vires, and gave judgment in favour of the plaintiff for the full amount of the claim and costs. 20

At the trial the Plaintiff abandoned his claim to a declaration in respect of the validity of the Provincial Securities Interest Act 1937, and admitted that the debentures set out in the Plaintiff's Statement of Claim were executed in the Province. 30

The facts are not in dispute and are summarized in the reasons for judgment of the learned trial Judge.

ARGUMENT.

I.

A.—The Provincially Guaranteed Securities Proceedings Act, being Chapter 11 of the Statutes of Alberta, 1937, is within the legislative competence of the Province and as the Plaintiff has not complied with the terms of the Act by obtaining the consent of the Lieutenant Governor in Council to bring and maintain the action, it is submitted that the learned trial Judge was without jurisdiction to try and adjudicate upon the same.

The Provincially Guaranteed Securities Proceedings Act is validly enacted by the Provincial Legislature under the powers given it under sub-headings 13, 14 and 16 of the British North America Act;

> " 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.
>
> 16. Generally all matters of a merely local or private nature in the Province."

It is submitted that this enactment in its true pith and substance comes specifically within the above powers granted to the Province under Section 92 of the British North America Act, and since it does not conflict with any of the enumerated powers granted to the Dominion, it is therefore valid and effectual.

This principle was laid down in explicit terms in the decision of *Attorney General for Ontario* v. *Attorney General for Canada*, [1912] A.C. 571, at p. 583; 1 Cameron 734. The Earl of Loreburn, L.C. at page 583 (Cameron 734) says:

> " . . . In the interpretation of a completely self-governing constitution founded upon a written organic instrument, such as the British North America Act, if the text is explicit the text is conclusive, alike in what it directs and what it forbids. When the text is ambiguous, as, for example, when the words establishing two mutually exclusive jurisdictions are wide enough to bring a particular power within either, recourse must be had to the context and scheme of the Act . . . "

B.—The fact that the enactment may incidentally affect the rights of companies outside the Province or matters over which the Dominion Parliament has control is not important if the true intent and purpose of the legislation is in relation to property and civil rights in the Province or the administration of justice.

See *Citizens Insurance Company* v. *Parsons*, 7 A.C. 96; 1 Cameron 287 at p. 278 et seq.

Hodge v. *Queen*, 9 A.C. 117 at p. 132. 1 Cameron 333 at p. 344.

In the Supreme Court of Alberta (Appellate Division).

No. 10. Appellants' Factum. 7th January, 1938—*continued.*

Canadian Pacific Wine Co. v. *Tuley* [1921], 2 A.C. 417 at p. 422–3, 2 Cameron, at p. 242.

Reference re Employment & Social Insurance (1936) 3 D.L.R. 644, at p. 666.

Rex v. *Arcadia Coal Co.* (1932), 1 W.W.R. 771, at p. 776 & 780–784.

It is submitted that the Legislature of the Province may incidentally affect the exaction and collection of interest if the legislation is primarily within the specifically enumerated powers set out in Section 92 of the British North America Act.

See *Rex* v. *Osjorm*, 22 A.L.R. 582. Harvey C.J. at p. 584 (1927) 2 W.W.R. 703 at p. 704–5.

See also *Rex* v. *Corry*, 26 A.L.R. 390.

In view of these authorities it is submitted that the learned trial Judge erred when he held that this statute was invalid because it did in fact derogate from Dominion rights and powers with respect to interest and was in direct conflict with Section 2 of the Interest Act of Canada.

If the learned trial Judge were correct in his view it would render invalid and ineffectual a large number of Provincial Statutes, such as the Statute of Limitations, Debt Adjustment Act, and others, which must necessarily incidentally affect or derogate from rights over which the Dominion Parliament has legislative jurisdiction. The learned Trial Judge has entirely overlooked the principles which necessitate an examination of the true pith and substance of the legislation and the double aspect rule which will be referred to later in the argument.

C.—There are numerous enactments barring access to the Courts or placing a condition precedent on the right of a litigant to commence proceedings in the Courts of the Province which necessarily must affect civil rights outside the Province or the collection of interest which have never been questioned, or which have been held to be within the legislative competence of the Provinces.

See Limitation of Actions Act—Ch. 8, Statutes of Alberta, 1935.

Debt Adjustment Act—Ch. 9, Statutes of Alberta, 1937.

Hill v. *Baade* (*No.* 2)—(1934) 2 W.W.R. 16 (Sask.).

Beiswanger v. *City of Swift Current* (1930) 3 W.W.R. 519 Turgeon J.A. at p. 520, says :

> " . . . In my opinion, the legislature, acting in pursuance of its jurisdiction over property and civil rights in the Province, in respect of matters not assigned to the Parliament of Canada by the British North America Act 1867, Chapter 3, has the power to prevent or postpone the bringing of actions in tort by one person against another, or to make the bringing of such actions dependent upon the consent of a person or body appointed by law, its control of the subject-matter being supreme and unlimited."

Maley v. *Cadwell* (1934) 1 W.W.R. 51.

Haultain C.J. at p. 56, dealing with the constitutional validity of the Saskatchewan Debt Adjustment Act, says :

"The Legislature has exclusive jurisdiction to make laws in relation to property and civil rights in the province and in relation to the administration of justice in the province, including the constitution, maintenance and organization of provincial Courts of civil jurisdiction. It creates the Courts, and bestows and prescribes their jurisdiction, and may at any time enlarge or circumscribe, or otherwise alter that jurisdiction. It may, in my opinion, abolish any existing right of action, or postpone it by moratorium, under its power to legislate in relation to property and civil rights. It may also, in my opinion, prescribe upon what terms or under what circumstances, or upon the compliance with what conditions precedent, any action may be taken or continued, and may delegate such powers to any person."

In *Allen* v. *Trusts and Guarantee Company* (Poponoff Estate) (1937) 2. W.W.R. 257, Harvey C.J. held that the absence of a permit would have been a complete bar to the Plaintiff's action had it not been for Section 22 of the Debt Adjustment Act. At page 264, he states :

"The right of Allen in this case is, of course, a civil right in the Province and a proper subject of legislation by provincial statute and since I have come to the conclusion that the right of action exists it is necessary to see if it is subject to any limitation by Provincial Statute."

See also *Micas* v. *Moose Jaw and Attorney General for Saskatchewan*, (1929) 1 W.W.R. 725. Haultain C.J.S. at p. 727.

Kowhanko v. *Tremblay* (1920) 1 W.W.R. 481, at 489.

Attorney General for Quebec v. *Slanet & Grimstead et al* (1933) 2. D.L.R. 289.

D.—The learned Trial Judge found it unnecessary to decide whether the legislature could effectually prevent action in respect of a debt payable outside the Province.

It is submitted that the present case can be distinguished from the case of the *Royal Bank* v. *The King* (1913) 4 A.L.R. 929, [1913], A.C. 283, because in that case the legislature was attempting to deal with property outside the province which would have the effect of preventing the bond-holders from obtaining their money in an action against the Royal Bank at its head office in Montreal, but in the present case there is nothing in the impugned Act to prevent the plaintiff suing the defendant outside the Province, but merely from pursuing his remedy within the Province, in the Courts of Alberta over which the legislature of the Province has full and complete jurisdiction.

The judgment of the Appeal Court in *Credit Foncier Franco Canadian* v. *Ross & Attorney General; Netherlands Investment Company* v. *Fife & Attorney General* [1937] 2 W.W.R. 353 at 360 can be distinguished from this case.

Under this Act, Chapter 11,1937, there is no alteration in the terms of any contract, and all the Province has done is to impose a condition precedent to the right to bring an action under certain kinds of contract, something

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which it has a perfect right to do under its exclusive jurisdiction over the administration of justice.

This enactment could not have the effect of in any way altering the relief to be obtained in a suit in another Province.

The purpose of this Act is not one in derogation of or interfering with rights outside the Province. It is in substance an Act dealing with civil rights and the administration of justice within the Province.

Workmen's Compensation Board v. *C.P.R. Company* [1920] A.C. 184 at p. 191–2; 2 Cameron 151, at p. 156–7.

It is urged that this legislation is dealing with contracts made in Alberta and regardless of the place where the coupons or interest may be payable, they are nevertheless contracts within Alberta and can be dealt with by the Provincial legislature under its exclusive jurisdiction over property and civil rights within the Province.

Mt. Albert Borough Council v. *Australian Temperance & General Mutual Life Insurance Society Ltd.* 1937 (4) All. Eng. Rep. 206 at p. 213–4–5.

E.—It is submitted that the Court must give its consideration to the terms of the enactment itself and if it is unambiguous in its language then it should not look at other statutes or enactments in order to ascertain the intention of the Legislature. It is not proper to determine the intention of the Legislature by reference to another enactment unrelated in terms and the Courts have no right to inquire as to the motives which may have induced the Legislature to exercise its powers.

Lefroy "Canada's Federal System." p. 75.

City of Fredericklon v. *The Queen*, 2 S.C.R. 522–23.

The only rule for the construction of acts of Parliament is that they should be construed according to the intentions of the Parliament which passed the Act. If the words of the statute are precise or unambiguous then no more can be necessary than to expound those words in their natural and ordinary sense. The words themselves do in these cases best declare the intention of the law giver.

Sussex Peerage Case, Tindal, C.J. [1844] 11 Cl. & Fin. 85 at p. 143.

Beale's "Cardinal Rules of Interpretation." 3rd Ed. p. 315.

The Court has nothing to do with policy or with any unexpressed intentions of Parliament. Its duty is simply to ascertain the meaning of the Act as it stands.

A.D. & Board of Education v. *West Riding of Yorkshire County Council*, [1907], A.C. 29.

Canadian Performing Rights Society v. *Famous Players Canadian Corporation*, [1929], A.C. 456.

Hack v. *The London Building Society*, 1883, 23 Ch. D. 103 at 112.

Rex v. *The Commissioner of Income Tax*, 1888, 22 Q.B.D. 296 at p. 307.

And see Beale's "Cardinal Rules of Interpretation," 3rd Ed. p. 417.

Rex v. *Nat Bell Liquors Ltd.* [1922] 2 A.C. 128 at p. 138.

The legislative competence of a Province under a rigid constitution cannot vary according to the motive or intention of the legislators. The

legislative powers remain fixed and their legal limits cannot vary with the circumstances of their exercise.

Attorney General for Manitoba v. *Attorney General for Canada* [1929] A.C. 260.

Where a statute is " Original," that is one which contains on its face no reference to any origin but comes into existence full grown and without ancestry, it is not proper for the purposes of interpreting it to look at the evolution even of the same enactment under some other system of law.

Attorney General for Ontario v. *Perry*, [1934] 3 W.W.R. 35, [1934], A.C. 477, at p. 487.

Armstrong v. *Estate Duty Commissioner* [1937] 2 W.W.R. 593 at p. 600.

F.—The judgment of Rose C.J. in the case of *Ottawa Valley Power Company* v. *Attorney General of Ontario* [1936]3 D.L.R. 468, and the dissenting judgments of Latchford, C.J. and Riddell, J. [1936] 4 D.L.R. 594, are authorities upholding the validity of the enactments in question in this action.

See also *Beach* v. *H. E. Power Commission of Ontario* [1927] 1 D.L.R. 277–8, and remarks of Riddell J. in the *Ottawa Valley case* at p. 598.

Smith v. *London* (1909) 20 O.L.R. 133, at p. 137.

Florence Mining Co. v. *Cobalt Lake Mining Co.* (1909) 18 O.L.R. 275.

Riddell, J. at p. 279 says :

> " In short, the Legislature within its jurisdiction can do everything that is not naturally impossible, and is restrained by no rule human or divine. If it be that the plaintiffs acquired any rights, which I am far from finding, the Legislature had the power to take them away. The prohibition, ' Thou shalt not steal ' has no legal force upon the sovereign body. And there would be no necessity for compensation to be given. We have no such restriction upon the power of the Legislature as is found in some States."

The facts of this case can be distinguished from those upon which the judgment of the majority of the Court in the *Ottawa Valley Power case* was based because in that case the Legislature of Ontario attempted to declare null and void certain contracts which had been entered into outside the Province and by the same enactment provided that the Courts should be barred to any claim against the Power Commission. The court could quite reasonably say that the pith and substance of the legislation was an attempt to deal with contracts outside the Province and not administration of justice and that the provision relating to the administration of justice was merely ancillary or incidental to the main enactment dealing with extra-territorial contracts.

It is submitted, however, that under the Provincially Guaranteed Securities Proceedings Act the true nature and intent of the enactment is in relation to the administration of justice in the Province and it has within its four corners no reference to any subject matter over which the Province has not legislative competence, and, therefore, the learned Trial Judge erred

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in adopting the *Ottawa Valley Power case* as an authority against t h defendants in this action.

Hodge v. *Rex*, supra.

Florence Mining Co. v. *Cobalt Lake Mining Co.*, supra.

Rex v. *Stanley* [1935] 3 W.W.R. 517 and authorities cited therein. McGillivray J.A. at p. 532–3–4.

The inference that the Legislature is dealing with a subject other than the one over which it has legislative jurisdiction must be drawn solely from the terms of the legislation itself.

Attorney General for Ontario v. *Reciprocal Insurers* [1924] A.C. 328.

Re Insurance Act of Canada and cases cited therein [1932] A.C. 41.

Re Section 498A of Criminal Code [1937] A.C. 368.

There is nothing in the Provincially Guaranteed Securities Proceedings Act to show that the legislature is dealing with anything other than the administration of justice.

Lefroy, in his "Canada's Federal System" at p. 553 questions whether Parliament can take away jurisdiction from the Provincial Courts even in Dominion matters. He states:

> "Under No. 14 of Section 92 the provincial Legislatures have the exclusive power to constitute, maintain and organize provincial courts, both of civil and criminal jurisdiction, for the administration of justice in the province; and it does not seem that the Dominion can take that jurisdiction away."

Liquidators of the Maritime Bank of Canada v. *Receiver General of New Brunswick* [1892] A.C. 437 at p. 442; 1 Cameron 414 at p. 418.

See *In re Small Debts Recovery Act* [1917] 3. W.W.R. 698; Harvey C.J. at p. 699 and Beck J. at p. 707.

Re Small Debts Act, 5 B. C.R. 246 at p. 254, 262–3–4.

Regina v. *Bush*, 15 O.R. 398, at p. 400–1, 404–5.

G.—In conclusion it is submitted that in order for the Court to hold that the Provincially Guaranteed Securities Proceedings Act is dealing with interest or with matters over which the Legislature has no control or in derogation of Dominion rights, the Court must make a conjecture as to the unexpressed intent of the Legislature. It is pointed out that the plaintiff made no application to the Lieutenant Governor in Council for a fiat to proceed with this section and that there is no evidence before the Court that there was any intention of preventing the plaintiff from having his right to bring an action to recover interest on Provincially Guaranteed bonds tested in an action before the Courts. It is suggested that the Court must decide upon the validity of the Provincially Guaranteed Securities Proceedings Act from the language of the Act itself and to say whether it is valid or not on the assumption that the Provincial Guaranteed Interest Act had never been passed, and that the Court ought not to give consideration to the provisions of the latter Act when interpreting the provisions of the Provincially Guaranteed Securities Proceedings Act.

II.

In the Supreme Court of Alberta (Appellate Division).

No. 10. Appellants' Factum, 7th January, 1938—*continued.*

H.—The Provincial Guaranteed Securities Interest Act Chapter 12 of the Statutes of 1937, provides for a variation in the terms of certain contracts or securities described as guaranteed securities defined as meaning all debentures which are guaranteed by the Province with certain specified exemptions. Section 3 of the Act reads in part as follows :—

> " 3 (1). Notwithstanding any stipulation or agreement as to the rate of interest payable in respect of any guaranteed securities 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 : . . ."

There follow details of the rate of interest substituted by the statute for the rate provided for in the security. The securities concerned in this action are debentures issued by the Lethbridge Northern Irrigation District and guaranteed by the Province. A number of these debentures are held by the Plaintiff and bear interest at the rate of 6% per annum according to their terms. The statute varies these terms by providing that the interest payable shall be 3% per annum on from and after the first day of June, 1936.

It is submitted that this statute is within the legislative authority of the Province under sub-heads 13 and 16 of Section 92 of the British North America Act. It is submitted that in its pith and substance this is legislation as to " property and civil rights in the province " or as to matters of a " local or private nature in the province," dealing as it does with certain specified contracts.

The subject matter is dealt with in a local or provincial manner and, while touching on and affecting the subject of interest, is not interest legislation as such. It is submitted that while Parliament has exclusive jurisdiction to legislate as to interest, the same subject may be dealt with in a different aspect by the Provincial legislature when legislating, for instance, as to contracts such as are in question here. The " double aspect " rule was in terms introduced in *Hodge* v. *The Queen* 9 A.C. 117. Sir Barnes Peacock says (A.C. 130 : Cameron 344) :

> " . . . The principle which that case (*Russell* v. *The Queen*) and the case of the *Citizens Insurance Company* illustrate is, that subjects which in one aspect and for one purpose fall within Sect. 92 may in another aspect and for another purpose fall within sect. 91."

See also *Citizens Insurance Company* v. *Parsons :* 7 A.C. 96.
See judgment—A.C. report at 108.
See *John Deere Plow Co.* v. *Wharton* ([1915] A.C. 330 : Cameron 814).
Viscount Haldane, L.C. at page 339 says :

> " . . . It must be borne in mind in construing the two sections that matters which in a special aspect and for a particular purpose may fall within one of them may in a different aspect and for a different purpose fall within the other. In such cases the nature and scope of the legislative attempt of the Dominion or the Province, as

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the case may be, have to be examined with reference to the actual facts if it is to be possible to determine under which set of powers it falls in substance and in reality."

Rex v. *Stanley* [1935] 3. W.W.R. 517, 528 to 531.
O'Brien v. *Royal George Co. :* 16 A.L.R. 373, 375.
Rex v. *Osjorm :* 22 A.L.R. 582, 584 to 586.
Reg. v. *Wason :* 17 O.A.R. 221, approved in *Rex* v. *Corry* 26 A.L.R. 390.
Cunningham v. *Tomey Homma :* [1903] A.C. 151.

On the principles enunciated in these cases, it is submitted that the Province can legislate to affect interest, when legislating as to contracts such as those concerned in this action and the right to recover under same.

I.—The next question which arises is whether, though prima facie the statute comes within section 92, it also comes within the substance of a subject assigned to Parliament by section 91 of the British North America Act, namely " Interest." It is submitted again that the statute in question is not legislation as to " Interest " within the meaning of that word in subhead 19 of section 91. It is submitted that the authority of Parliament to legislate as to Interest is limited to general legislation of national scope such as the prohibition of unreasonable rates of interest and perhaps, the fixing of a rate of interest in cases where the same has not been provided for in contracts etc. but that it does not extend to legislation relating to particular contracts with respect to which, it is submitted, the parties have a free hand. Surely persons contracting in each province can agree to any rate of interest they choose and collect it, subject only to the limitations imposed by the Money Lenders Act or other Dominion statute prohibiting excessive rates of interest. It is submitted that section 2 of the Interest Act adds nothing to the powers of individuals to contract and that these would be the same if the said section were eliminated from the Interest Act. Some meaning, therefore, must be given to this section, other than that given to it by the learned trial Judge, and it is submitted, if the section has the meaning ascribed to it by him, it would be *ultra vires* Parliament, as dealing with matters of contracts and, therefore, of civil rights within each province.

The history of legislation in England relating to interest prior to Confederation should be looked at in interpreting what was meant by " Interest " in section 91. In England for centuries all interest was regarded as usurious and penalties were imposed upon persons collecting excessive interest or, at times any interest at all. The only statutes relating to interest, from the time of Henry VII, dealt with the matter practically as criminal law under which forfeitures, penalties and sometimes imprisonment were imposed for contracting or collecting excessive interest. The following statutes may be referred to :

2 Henry VII, c. 8 (4 Statutes at Large 59);
37 Henry VIII, c. 9 (5 Statutes at Large 225);
5–6 Edward VI, c. 20 (5 Statutes at Large 388);
13 Elizabeth, c. 8 (6 Statutes at Large 276) ;

21 Jac. I, c. 17 (7 Statutes at Large 275);
12 Car. II, c. 13 (7 Statutes at Large 440);
12 Anne St. 2, c. 16 (13 Statutes at Large 118).

These acts were repealed by 17–18 Vict. c. 90 (1854).
See also *Lynch* v. *Canadian North West Land Co.* 19 S.C.R. 204.
Lefroy on Canada's Federal System, p. 202 and 274.
Lefroy on Legislative Power in Canada, p. 389 (note).

It seems to have been taken for granted that the Provinces may legislate so as to affect interest in matters of a purely provincial aspect.

See *R.S.O.* 1927, *c.* 88, *secs.* 34–36 (*Judicature Act*).
R.S.A. 1922, *c.* 72, *sec.* 37(*n*) (*Judicature Act*).
R.S.O. 1927, *c.* 212, *secs.* 1(*a*) *and* 3 (*Money Lenders Act*).
Ontario Rules of Court, 435, 568, 722 and 723.
Alberta Rules of Court, 327, 663, 686.
R.S.A. 1922, c. 155, secs. 26 (c) and (d) (Partnership Act).
See also *Toronto Railway* v. *Toronto Corporation* [1906] A.C. 117, 121.
Consolidated Distilleries v. *The King* (1932) S.C.R. 419.

On the contention that Parliament in legislating as to Interest is limited to dealing with the subject as a matter of national scope and concern, the following authorities are referred to :

City of Montreal v. *Montreal Street Railway* [1912] A.C. 333, 343–4.
The Board of Commerce Case [1922] 1 A.C. 191, 197–8.
Lawson v. *Interior Fruit* (1931) S.C.R. 357, 367.
Rex v. *Arcadia Coal Co.* 26 A.L.R. 348, 368.
Spooner Oils Ltd. v. *Turner Valley Conservation Board* (1932) 3 W.W.R. 477, affirmed on this point in (1933) S.C.R. 648, 649.

Section 17 of the Farmers' Creditors Arrangement Act which has been held to be valid interest legislation, can it is submitted be justified on the principles set out above, that Parliament deals with the matter as one of national importance and also as prohibiting excessive interest rates.

K.—It is further submitted that even if Parliament had authority to pass section 2 of The Interest Act as ancillary to its power to legislate as to interest, there is no conflict between that section, properly construed, and the Act under consideration.

The said section reads as follows :—

> " 2. 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."

This section merely makes it clear that no penalty will be imposed for stipulating for or exacting any particular rate of interest except as may be provided specifically in the Act itself, or any other Dominion Act, the Money Lenders Act and the Pawnbrokers Act being examples. The English Usury Acts, enumerated above, would be in force in Upper Canada prior to Confederation, by virtue of 32 Geo. III, U.C. c. 1, or 40 Geo. III, c. 1 (U.C.),

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the former introducing the civil law and the latter the criminal law of England as existing on September 17th, 1792.

See Clement's Canadian Constitution, at pages 284 et seq. Then in 1811 legislation was passed on the subject by 51 Geo. III found in R.S.U.C. Vol. I, p. 177. Sec. VI of this Act prohibited interest of more than 6% and imposed penalties of treble the amount lent on any persons accepting a higher rate of interest. This was repealed by c. 80 of The Statutes of Canada 1852–3, assented to March 24, 1853, and Section II of the latter Act reads as follows :

> " II. And be it enacted that no contract to be hereafter made in any part of this Province for the loan or forbearance of money or money's worth, at any rate of interest whatsoever and no payment in pursuance of such contract shall make any party to such contract or payment liable to any loss, forfeiture, penalty or proceeding, civil or criminal for usury, any law or statute to the contrary, notwithstanding."

The effect of this Section is, it is submitted, merely to make it clear that the penal provisions relating to usury, whether such provisions were in Imperial or Canadian Statutes, are no longer in force. The Section cannot be construed as giving persons the right to contract in a certain way, but merely as removing the penalties for contracting for and exacting certain rates of interest. When the penalties were removed, it did not require any legislation to allow persons to contract for any rate of interest they chose.

Section III made void contracts and securities only so far as relates to interest over 6% and provided that said rate or such lower rate as may have been agreed upon should be allowed and recovered in all cases where the parties have agreed to it. The same remarks apply to this section as to Section II, and it must be remembered that the Legislature which enacted these sections had power to legislate as to property and civil rights, as well as to legislate as to subjects now contained in Section 91 of the British North America Act.

The next Statute of the Province of Canada dealing with this subject was Chapter 85 of the Statutes of 1858.

Section 1 of this Statute repealed Section 3 of the 1853 Statute as to future contracts. Section 2 read as follows :—

> " 2. It shall be lawful for any person or persons other than those excepted in this Act, to stipulate for, allow, and exact on any contract or agreement whatsoever any rate of interest or discount which may be agreed upon."

Reading these different Acts together leads to the conclusion that this Section 2 is merely supplementary to Section 1 and added to make it clear that penalties, etc. are abolished. After Confederation, Section 2 was incorporated in R.S.C. of 1886 without the words " It shall be lawful," and, it is submitted that the present Section 2 of The Interest Act must be interpreted as if the words " without penalty " were included and that the

section does not do more than the pre-Confederation Statutes did, viz. to make it clear that the penal provisions as to interest or usury were repealed. The revision in 1886 would not change the meaning of the pre-Confederation Statute. See "An Act respecting the Revised Statutes of Canada," R.S.C. 1886, Vol. 1, c. 4, s. 8.

L.—The defendant district was formed under the provisions of the Irrigation Districts Act of the Province of Alberta, and consists of an area of land in the said Province. The statute provides for the operation of the District by a Board of Trustees. Under authority of the said statute the powers of the Board are at present vested in the defendant Charlesworth. The debentures were executed in the Province of Alberta and are a charge or lien upon all the lands (including the buildings and improvements thereon) appearing upon the assessment roll of the District and upon all the property of the Board. R.S.A. 1922, c. 114, s. 43. Section 44 of the same Act provides that the form of the debentures and the rate of interest payable thereon and all matters relating thereto not specifically dealt with by the Act shall be as provided by the Board, subject to the approval of the Provincial Treasurer. The debentures to be issued are to be for sufficient to insure the actual receipt by the Board of the sum which has been assented to by the Minister. (sec. 41).

Under these circumstances, it is submitted that the proper law of the contract is the law of Alberta and that it is immaterial that the debentures may be payable in Edmonton, Toronto, Montreal or New York at the holders' pleasure. The law governing the amount of the obligation itself was always and still is the law of the Province of Alberta. The parties must be presumed to have contracted with reference to the law of Alberta and any changes from time to time in such law.

See *Barcelo* v. *Electrolytic Zinc Co. of Australasia* 48 Comm. L.R. 391, 436.

Evatt J at page 436 said :

> " It may be further urged that clause 63 should not be interpreted as allowing to trench upon the obligation of the debenture and its discharge, statutes passed by the Victorian Legislature after the execution of the trust deed and the issue of the debentures. On this point, however, the opinion of Isaacs J. in *Delaney* v. *Great Western Milling Co.* ((1916) 22 C.L.R. 150) should be followed : He said that the Judgment of Lord Esher M.R. in *Gibbs & Sons* v. *Societe Industrielle et Commerciale des Metaux* ((1890) 25 Q.B.D. 399) impliedly recognized that :
>
> > ' in submitting to the law of a country, the contractors, wherever the contract is made, do not merely tacitly incorporate, so to speak, the existing laws of that country in relation to the contract, but tacitly submit to the system of law of that country in relation to the contract. And if that system includes power of subsequent legislation, that is part of the matter submitted

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to. It is the " system of law " which is submitted to. (1916) 22 C.L.R. at p. 169.'

It may be conceded that the parties did not anticipate that, during the currency of their agreement, there would be passed, in Victoria, legislation which would have the effect of discharging the plaintiff Company's obligation to pay the agreed rate of interest upon payment of a lower rate; but they clearly agreed to accept the Victorian legal system with all faults (if any) as well as with all virtues (if any). And their agreement must control."

See also the latest case in the Privy Council on the subject.

Mt. Albert Borough Council v. *Australian Temperance and General Mutual Life Insurance Society Ltd.* (1937) 4 All. E.R. 206, 213–215.

The rate of interest on the debentures in question was fixed with the authority of the Legislature. It would not be seriously contended that it was beyond the authority of the Legislature to do so, in the case of such contracts. It would not be legislating with respect to interest as that word in section 91 must be interpreted. All that the legislature has done by the Act now under consideration is to change a rate of interest in certain specific contracts which had previously been fixed by the authority of the Legislature. This, it is submitted, is clearly within the legislative authority of the Province. No civil right outside the Province has been affected, as the law of Alberta would apply in any case.

It is submitted that this appeal should be allowed and that the Judgment of the learned trial Judge should be set aside and the action dismissed.

Dated at Edmonton, this 7th day of January, 1938.

W. S. GRAY.
H. J. WILSON.
of Counsel for the Appellants.

No. 11. Respondent's Factum, 7th January, 1938.

No. 11.

Respondent's Factum.

STATEMENT OF FACTS.

No evidence was led at the hearing and the facts stated below are admitted on the pleadings.

The plaintiff is incorporated under c. 113 of 3 & 4 Geo. V., of the Parliament of Canada, has its head office in the City of Toronto, in the Province of Ontario, and is duly licensed to do business in the Province of Alberta pursuant to the provisions of The Alberta Insurance Act, 1936. (See par. 1 of Statement of Claim).

The defendant Board of Trustees of the Lethbridge Northern Irrigation District is incorporated under the Irrigation Districts Act, 1915, being c. 13 of the Statutes of Alberta 1915. Pursuant to statutory authority the said

defendant issued its 6% debentures which were guaranteed by the Province of Alberta, (See pars. 2 to 5 and 7 and 8 of the Statement of Claim).

The defendant, L. C. Charlesworth, is the Official Trustee, appointed pursuant to the Statute, of the defendant Lethbridge Northern Irrigation District and is added as a defendant for the purpose of giving him notice of the proceedings. (Par. 2 of the Statement of Claim).

The plaintiff at its head office in the City of Toronto, in the Province of Ontario, is the bearer, bona fide holder and owner of $181,000.00 principal amount of the said debentures. (See par. 6 of the Statement of Claim).

The interest coupons on the said debentures due November 1st, 1936, were not paid when presented in Toronto, December 15th, 1936. Action No. 27728 in the Supreme Court of Alberta for the amount thereof was thereupon brought on January 15th, 1937, to which action the defendant pleaded the Provincial Securities Interest Act, c. 11 of the Statutes of Alberta, 1936, (2nd Session). (See pars. 11 & 12 of the Statement of Claim).

This action came on for trial before The Honourable Mr. Justice Ives at Edmonton on February 15th and 19th, 1937, and by Judgment entered February 23rd, 1937, it was adjudged for reasons stated in 1937 1 W.W.R. p. 414 that the said c. 11 of the Statutes of Alberta 1936 (2nd Session) was ultra vires of the Province of Alberta and that the plaintiff should recover Judgment for the amount of the interest coupons with costs. (See Par. 14 of the Statement of Claim).

A Notice of Appeal from the said Judgment was duly filed and served March 3rd, 1937 (Par. 15 of Statement of Claim) and thereafter on April 14th, 1937, three new statutes were enacted, viz. :—

(*a*) 1937, c. 11, The Provincially Guaranteed Securities Proceedings Act ;

(*b*) 1937, c. 12, The Provincial Guaranteed Securities Interest Act;

(*c*) 1937, c. 13, The Provincial Securities Interest Act. This statute repealed c. 11 of 1936 (2nd Session).

The appeal from the Judgment of Ives J. in the previous action was then abandoned April 21st, 1937. (Par. 17 of Statement of Claim).

Following the abandonment of the said appeal the plaintiff endeavoured to tax its costs and to issue execution on its Judgment and was met by the provisions of c. 11 of 1937. The Clerk relying upon the provisions of this statute refused to tax the costs and to issue execution and to permit the plaintiff to proceed to enforce its Judgment. (Pars. 18, 19 & 20 of the Statement of Claim). The Judgment was not paid.

Part of the claim in this action commenced June 16th, 1937, is for a declaration that the said c. 11 of 1937 is ultra vires the Legislature of Alberta and for a Judgment based on the previous Judgment. To this claim for Judgment, c. 11 of 1937 is pleaded as a defence.

Joined with the action on the Judgment is a claim for payment of coupons amounting to $5430.00 due with respect to the said debentures on May 1st, 1937, (Pars. 21 & 22 of Statement of Claim), the said coupons

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having been presented May 11th, 1937, and payment being refused. To this claim caps. 11 and 12 of 1937 are pleaded as defences.

The defence also pleads payment into Court of the sum of $2715.00, being one-half of the amount owing under the said coupons and being the amount which would be payable if the Act in question were valid.

The plaintiff replied by contending that caps. 11 & 12 of 1937 are ultra vires the Legislature of Alberta (pars. 2 & 3 of Reply), and the notices required by Section 34 of The Judicature Act were given (See p. 9). The Attorney General did not appear in the action, the defendants being represented by Mr. W. S. Gray, K.C., and Mr. H. J. Wilson, K.C., of the Attorney General's Department.

It will be seen then that the issues in the appeal are as to the constitutional validity of caps. 11 and 12 of 1937.

ARGUMENT.

The argument of the Respondent may be summarized as follows:

1. The statute, c. 12 of 1937, is interest legislation and so beyond the competence of the Legislature of the Province.

2. If this is not correct and if the legislation can be said to be under the heading of " property and civil rights within the province " then the said statute is bad because it conflicts with Sec. 2 of the Interest Act, and to the extent of the conflict is over-ridden by the latter Act.

3. In any event so far as the bonds in question in this action are concerned, even if the legislation can be said to be within the heading " property and civil rights within the province," it is bad so far as it affects the bonds in question in this action because they are not property within the province.

4. The statute, c. 11 of 1937, which purports to bar actions in respect of securities guaranteed by the Province except with the consent of the Lieutenant-Governor-in-Council is ultra vires.

It is proposed to deal with these points in the order set out but before doing so it will probably be useful to outline briefly the principles of law which are to be applied in the determination of the questions involved.

In his Judgment in *Royal Trust Company* v. *A. G. Alta.* 1937, 1 W.W.R. at p. 378, Ewing J. quotes a passage from the Judgment in *re Reciprocal Insurance Legislation* 1924, 2 W.W.R. 397 at 403; [1924] A.C. at 337, as follows:

> " It has been formally laid down in judgments of this Board, that in such an enquiry the Courts must ascertain the ' true nature and character ' of the enactment (*Citizens Ins. Co. of Can.* v. *Parsons* [1881] 7 App. Cas. 96, 51 L.J.P.C. 11), its ' pith and substance ' (*Union Colliery Co. of B.C.* v. *Bryden* [1899] A.C. 580, 68 L.J.P.C. 118, 1 M.M.C. 337); and it is the result of this investigation, not the form alone, which the statute may have assumed under the hand of the draughtsman, that will determine within which of the categories of subject-matters mentioned in secs. 91 and 92 (of the B.N.A. Act,

1867) the legislation falls; and for this purpose the legislation must be ' scrutinized in its entirety ' (*G. W. Saddlery Co.* v. *The King* (1921) 1 W.W.R. 1034, [1921] 2 A.C. 91, at 117, 90 L.J.P.C. 102). Of course where there is an absolute jurisdiction vested in a Legislature, the laws promulgated by it must take effect according to the proper construction of the language in which they are expressed. But where the law-making authority is of a limited or qualified character, obviously it may be necessary to examine with some strictness the substance of the legislation for the purpose of determining what it is that the Legislature is really doing. Upon this principle the Board proceeded in 1878, in *Atty. Gen. for Quebec* v. *Queen Ins. Co.* 3 App. Cas. 1090, 38 L.T. 897, where a statute of Quebec (39 Vict., ch. 7), which took the form of a licensing Act, enacted under the authority of sec. 92 (9) of the British North America Act, was held to be in its true character a Stamp Act and an attempt to impose a tax which was an indirect tax, in contravention of the limitation to which the Provincial powers of taxation are subject under the second head of that section. The principle is recognized in *Russell* v. *The Queen* (1882) 7 App. Cas. 829, 51 L.J.P.C. 77, and in *Citizens' Insur. Co.* v. *Parsons* supra, and in 1899, conformably to this doctrine, it was held, in the well-known case of *Union Colliery Co. of B.C.* v. *Bryden*, supra, that a statutory regulation, professedly passed for governing the working of coal mines, which admittedly ' might be regarded as establishing a regulation applicable ' to the working of such mines and which ' if that were an exhaustive description of the substance of it ' was within the competency of the Provincial Legislature, by virtue either of sec. 92, subsec. 10, or sec. 92, subsec. 13,' must be classed, its ' true character,' its ' pith and substance ' being ascertained, as legislation in relation to the subject of ' aliens and naturalization,' a subject exclusively within the Dominion sphere of action. The general doctrine was later applied in *John Deere Plow Co.* v. *Wharton and Duck*, 7 W.W.R. 706, [1915] A.C. 330, 84 L.J.P.C. 64, 29 W.L.R. 917, and again in *G.W. Saddlery Co.* v. *The King*, supra."

Lord Tomlin in the *Fisheries Act case* from B.C., [1930] A.C. 111, at p. 118; 1929, 3 W.W.R. at p. 452, summarizes the Rules to be gathered from the decided cases as follows :—

" Questions of conflict between the jurisdiction of the Parliament of the Dominion and provincial jurisdiction have frequently come before their Lordships' Board, and as the result of the decisions of the Board the following propositions may be stated :

(1) The legislation of the Parliament of the Dominion, so long as it strictly relates to subjects of legislation expressly enumerated in sec. 91, is of paramount authority even though it trenches upon matters assigned to the provincial Legislature by sec. 92 (*see Tennant* v. *Union Bank of Canada* [1894] A.C. 31, 62 L.J.P.C. 25).

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(2) The general power of legislation conferred upon the Parliament of the Dominion by sec. 91 of the Act in supplement of the power to legislate upon the subjects expressly enumerated must be strictly confined to such matters as are unquestionably of national interest and importance, and must not trench on any of the subjects enumerated in sec. 92 as within the scope of provincial legislation unless these matters have attained such dimensions as to affect the body politic of the Dominion (*see Atty-Gen. for Ontario* v. *Atty. Gen. for Canada* [1896] A.C. 348, 65 L.J.P.C. 26).

(3) It is within the competence of the Dominion Parliament to provide for matters which, though otherwise within the legislative competence of the provincial Legislature, are necessarily incidental to effective legislation by the Parliament of the Dominion upon a subject of legislation expressly enumerated in sec. 91 (*see Atty. Gen. for Ontario* v. *Atty. Gen. for Canada* [1894] A.C. 189, 63 L.J.P.C. 59, and *Atty. Gen. for Ontario* v. *Atty. Gen. for Canada* supra).

(4) 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 (*see Grand Trunk Ry.* v. *Atty. Gen. for Canada* [1907] A.C. 65, 76 L.J.P.C. 23)."

In considering the first of the above Rules laid down by Lord Tomlin there should be kept in mind the commentary upon the concluding words of Sec. 91 of the B.N.A. Act made by Lord Watson in *Atty. Gen. Ontario* v. *Atty. Gen. Canada* [1896] A.C. at p. 359, where he points out that those concluding words mean that matters included within the enumerated heads of sec. 91 do not come within any of the matters described in the sixteen heads of sec. 92. It follows then that a Provincial Legislature is absolutely incompetent to legislate upon matters included within the enumerated heads of sec. 91 whether or not the Dominion Parliament has legislated thereon.

Parsons Case, 7 A.C. at 109; *Union Colliery* v. *Bryden*, [1899] A.C. at 587–8; *A.G. Ontario* v. *A.G. Canada* [1896] A.C. at 359; *A.G. Canada* v. *A.G. Ontario* [1898] A.C. at 715; *The John Deere Case*, [1915] A.C. at 337; *Gt. West Saddlery case*, 1921, 1 W.W.R. at p. 1053; cited in *Rex* v. *Acadia Coal Co. Ltd.*, 1932, 1 W.W.R. 782.

1. It is now proposed to discuss the first of the questions above set out, viz: whether the statute, c. 12 of 1937, is ultra vires because it is interest legislation in its pith and substance. In considering this question there must be determined at the outset the extent of the meaning of the word "interest" as used in sec. 91. If subsections 14 to 21 of that section are examined it will, it is submitted, lead to the conclusion that the intention of the framers of the Act was to give to the Dominion Parliament complete

control of these matters and so to establish a uniform commercial and financial system throughout Canada.

Lynch v. *C.N.W. Land Co.* 19 S.C.R. at 212, & at 225; *Ottawa Valley Power case*, 1936, 4 D.L.R. at 603–4.

At the time of confederation the Province of Canada possessed an Interest Statute (Consolidated Statutes of Canada 1859, Ch. 58, p. 682). The third section of this statute read :

> " Except as hereinafter provided any person or persons may stipulate for, allow and exact on any contract or agreement whatsoever, any rate of interest or discount which may be agreed upon."

This statute was of course applicable to the whole of the then province consisting of the areas which later became Ontario and Quebec and was passed by a legislature having full jurisdiction over property and civil rights and over all matters of a local or private nature. It is submitted that what was in the minds of the fathers of Confederation when assigning the field of interest to the federal parliament was the subject as it had previously been dealt with by the legislature of the provinces.

The Court may find it useful to refer to the following statutes :

> Consolidated Statutes Province of Canada 1859, Ch. 58, p. 682; Statutes of Canada 1873, Ch. 71; Statutes of Canada 1875, Ch. 18; Statutes of Canada 1880, Ch. 42; Revised Statutes of Canada 1886, Ch. 127; Statutes of Canada 1889, Ch. 31; Statutes of Canada 1890 Ch. 34.

It will perhaps be useful to trace the origins of Sections 2, 3, 6, 7, 8, 9, 10 and 13 of the Interest Act.

The origin of these sections is as follows :—

Section 2 is Sec. 1 of c. 127 R.S.C. 1886, and is clearly taken from Section 3 of c. 58, Consolidated Statutes of Canada 1859.

Section 2 is also found in its present wording as Sec. 1 of c. 18, Statutes of Canada 1875, applicable to New Brunswick.

Section 3 is section 2 of c. 127 R.S.C. 1886, and is apparently taken from Section 8 of the above cited c. 58, Statutes of Canada 1859.

Section 6 is the equivalent of Section 3, R.S.C. 1886, c. 127, and is also found as Section 1 of c. 42, Statutes of Canada 1880.

Section 7 is the equivalent of Section 4 of R.S.C. 1886, c. 127, and is also found as Section 2, c. 42, Statutes of Canada 1880.

Section 8 is the equivalent of Section 5 R.S.C. 1886, c. 127, and is also found as Section 3, c. 42, Statutes of Canada 1880.

Section 9 is the equivalent of Section 6, R.S.C. 1886, c. 127, and is also found as Section 4 of Chapter 42, Statutes of Canada 1880.

Section 10 is Section 7 of c. 127, R.S.C. 1886, and is also found as Section 5 of c. 42, Statutes of Canada 1880.

Section 13 is the equivalent of Section 2 of Chapter 31, Statutes of Canada 1889.

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Following Confederation the Parliament of Canada enacted c. 71, of 1873, and c. 18 of 1875, dealing with Nova Scotia and New Brunswick respectively. The earlier Act applicable to Nova Scotia limited rates of interest. The New Brunswick Act, as pointed out above, left the rate to be fixed by the contract except with respect to banks.

The next Act passed by the Dominion Parliament after Confederation was the Act of 1880, which dealt only with mortgages of real estate. In 1886 the Statutes were consolidated, and c. 127 is an Act general in its application, with special provisions as to Ontario and Quebec, Nova Scotia and New Brunswick, British Columbia and Prince Edward Island. By c. 34, Statutes of Canada 1890 the special provisions applicable to the various provinces were repealed, and the only sections of the Act having special application were the present sections 12 to 15 inclusive, the origin of which is c. 31 of the Statutes of Canada 1889.

The foregoing considerations including this history of the legislation must, it is submitted, result in the conclusion that following Confederation it was believed that the whole subject matter of interest, *its rate and its enforcement*, was within the federal jurisdiction. It was thought advisable at the time not to have the law absolutely uniform but by 1890, except for the West, such uniformity had become desirable and possible.

The same conclusion is reached from an examination of the general nature of the words used in granting the power over interest to the Dominion Parliament. It is submitted that interest under head 19 of sec. 91 must be interpreted in its broader sense and not merely confined to rate of interest. This is shown by reference to the description of the various subjects set out in sec. 91 which are described in the briefest manner showing that it was intended to cover the whole field of those particular heads. If it were intended to confine this head to rates of interest or to usury it would have been very easy without detracting from the brevity referred to to have said " rate of interest " or " usury."

An examination of the three or four cases which have been decided leads to the same conclusion.

See : Lynch v. *C.N.W. Land Co.*, 19 S.C.R. 204; *Bradburn* v. *Edinburgh*, 5 O.L.R. 657; *The Farmers Creditors Arrangement Act*, 1936 S.C.R. p. 384; 1937 1 W.W.R. 320 (P.C.) *Case* v. *Godin*, 7 W.W.R. 396.

In the *Bradburn case* at p. 664 the learned Judge said :—

> " It is argued for the defendants that the right of the Dominion to legislate is only as to rate, as to usury, leaving details and matters affecting contracts to the provinces."

This is the same suggestion as is made by Lefroy at p. 278 of his " Canada's Federal System." The decision rejects the suggestion.

See also : Lynch v. *North West Land Co.* 19 S.C.R. 204; *Bradburn* v. *Edinburgh*, 5 O.L.R. 657; *Ref.* re *Farmers Creditors Arrangement Act*, 1936 S.C.R. 384; 1937, 1. W.W.R. 320 (P.C.); *Royal Trust Co.* v. *A. G. Alberta.* 1937, 1.W.W.R. 376; and on appeal 1937, 2 W.W.R. 353 (*sub nom Credit Foncier* v. *Ross*); *I. O. F.* v. *Lethbridge Northern*, 1937, 1 W.W.R. 414.

The Farmers Creditors Arrangement Act case (*supra*) is, it is submitted, an approval by the Supreme Court of the principle of the *Bradburn case* just cited, since it declares to be valid Section 17 of The Farmers Creditors Arrangement Act, a section which deals with interest " chargeable, payable or recoverable." It is pointed out that there is a difference between section 17 of The Farmers Creditors Arrangement Act and Section 10 of The Interest Act. In the former the rate of interest following the tender is reduced to 5%, while in the latter no interest is " chargeable, payable or recoverable."

The plaintiff contends that the Act in question is in its pith and substance interest legislation. Its sole purpose is to cut down the rate of interest on securities as defined in Sec. 2 from the contract rate to the rate specified in sec. 3. If this is correct and the legislation is interest legislation then it is submitted that upon the foregoing authorities the provincial legislature is absolutely incompetent to legislate.

2. But even if the legislation could be regarded, and it is submitted that it cannot be so regarded, as being not interest legislation but legislation on " property and civil rights within the province," it is, it is submitted, equally bad because of its conflict with sec. (2) of the Dominion Interest Act, and to the extent of the conflict is over-ridden by the latter Act. The Statutes in question provide for payment of a reduced rate of interest and provide (sec. 3 (2)) :

> " No person shall be entitled to recover in respect of any guaranteed security any interest at a higher rate than the rate hereby prescribed in respect of that guaranteed security."

Section 2 of the Interest Act, on the other hand, provides that the parties to a contract may stipulate for, allow and exact any rate of interest or discount that may be agreed upon. R.S.C. 1927, c. 102. The meaning of these words is, it is submitted, that the creditor may stipulate for the agreed rate, that the debtor may allow it, that is agree to pay it, and that when the contract is made the creditor may exact it, that is, compel the payment of it. The word " exact " is defined in the Oxford English Dictionary as follows :—

> " (*a*) to demand and enforce the payment of fees, tolls, money, etc. ;
>
> (*b*) to require by force or with authority the performance of the duty, labor, etc., the concession of anything desired."

It is submitted that there is a clear conflict between the provisions of the statute in question and the provisions of the Interest Act referred to. In dealing with this question the Court is asked to consider the double aspect rule, which is the fourth of Lord Tomlin's rules above referred to and which is further dealt with in the following cases :—

" *Grand Trunk Rly.* v. *A. G. Canada* [1907], A.C. 65 ; *A. G. Manitoba* v. *Forbes*, 1937, 1 W.W.R. 167 (P.C.).

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No. 11. Respondent's Factum, 7th January, 1938—*continued.*

3. Again even if the legislation is not interest legislation but is legislation with respect to " property and civil rights within the province " the subject matter of the action, the judgment in which is under appeal herein, is not " property and civil rights within the province " and the Act, it is submitted, must be held to be bad, at least so far as it affects the securities sued on in that action. Those securities are payable in Toronto, Montreal and New York, as well as in Edmonton, and the bonds of the plaintiff are bearer bonds held in Toronto and presented for payment there. Those bonds then are both situate and payable in Ontario and cannot be affected by provincial legislation as appears from the following cases.

Dobie v. *Temporalities Board*, 7 A.C. 136; *Royal Bank* v. *The King*, [1913] A.C. 283; 3 W.W.R. 994; Lefroy " Canada's Federal System," pp. 506–509; *Ottawa Valley Power Co.* v. *A. G. Ontario*, 1936, 4 D.L.R., p. 599 and p. 605; *Beauharnois* v. *Hydro Electric*, 1937, 3 D.L.R. 458; *Royal Trust Company* v. *A. G. Alberta* [1930], A.C. at 150; *I.O.F.* v. *Lethbridge Northern*, 1937, 1 W.W.R. 414; *Credit Foncier* v. *Ross*, 1937, 2 W.W.R. 353.

The next question for discussion is whether Chapter 11 of 1937 is a valid enactment because even if the argument to this point is correct and c. 12 of 1937 is bad on any or all of the grounds stated, still c. 11 if valid would prohibit the bringing of an action for the purpose of enforcing the remedies to which the plaintiff is entitled. The question raised is whether a provincial legislature can prohibit access to the courts for the purpose of determining rights which are under the control of a validly enacted federal statute or which, to put it another way, are not within any portion of the field of legislation marked off for the Province by Section 92 of the B.N.A. Act.

It is a fundamental condition of the Canadian Constitution that courts shall continue to exist.

In re Boaler, 1915, 1 K.B. at p. 36; *Kazakewich* v. *Kazakewich*, 1936, 3 W.W.R. at p. 718; *The Queen* v. *Burah*, 3 A.C. at p. 904.

Sections 91 and 92 and sections 96–101 of the B.N.A. Act are all based on this fundamental condition, and when Sec. 129 uses the word " abolish " this does not mean abolish without a substitute. The power of the Province under Section 92 (14) is to constitute, maintain and organize courts. *See reference concerning Chief Justice of Alberta*, 1923, 3 W.W.R. 929, where Lord Atkinson at p. 936 refers to the Provincial Legislature as being " endowed with the power and charged with the duty of constituting, maintaining and organizing provincial courts."

See annotation *Walker* v. *Walker*, 48 D.L.R. p. 1., at p. 9 and *Board* v. *Board*, 48 D.L.R. 13 at p. 17.

To these courts the right of access by the citizen is fundamental and one which cannot be restricted if the matter in question is a matter outside of the jurisdiction of the Provincial Legislature.

See Kazakewich v. *Kazakewich*, 1936, 3 W.W.R., at pp. 717, 718; *Smith* v. *City of London*, 20 O.L.R. at 153; *I.O.F.* v. *Lethbridge Northern*, 1937, 1 W.W.R. 414;

Admitting the validity of legislation precluding access to the courts to determine matters in their pith and substance within Provincial jurisdiction, nevertheless the Province cannot indirectly, by purporting to close the courts with respect to federal matters, trench upon fields of legislation reserved for the Dominion Government by Sec. 91 of the B.N.A. Act.

Madden v. *Nelson Sheppard*, [1899], A.C. at 627; *Rex* v. *Great West Saddlery*, 1921, 1 W.W.R. at p. 1040; *Ottawa Valley case*, 1936, 4 D.L.R. at pp. 602–3 and at p. 622.

GEO. H. STEER,
R. MARTLAND,
of counsel for the Respondent.

Edmonton, Jan. 7th, 1939.

No. 12.

Formal Judgment.

No. 12. Formal Judgment, 23rd May, 1938.

APPELLATE DIVISION OF THE SUPREME COURT OF ALBERTA
JUDICIAL DISTRICT OF EDMONTON.

AT THE COURT HOUSE IN THE CITY OF EDMONTON, MONDAY, THE TWENTY-THIRD DAY OF MAY, A.D. 1938.

Present:

THE HONOURABLE HORACE HARVEY, CHIEF JUSTICE OF ALBERTA; THE HONOURABLE MR. JUSTICE FORD; THE HONOURABLE MR. JUSTICE LUNNEY; THE HONOURABLE MR. JUSTICE MCGILLIVRAY; THE HONOURABLE MR. JUSTICE SHEPHERD.

Between:

THE INDEPENDENT ORDER OF FORESTERS - - - - - *Respondent*

and

THE BOARD OF TRUSTEES OF THE LETHBRIDGE NORTHERN IRRIGATION DISTRICT AND L. C. CHARLESWORTH, OFFICIAL TRUSTEE OF THE LETHBRIDGE NORTHERN IRRIGATION DISTRICT - - - - - - - - *Appellants.*

The appeal of the above named Appellants from the Judgment of The Honourable Mr. Justice Ewing pronounced in the above cause on the 1st day of November in the year of our Lord nineteen hundred and thirty-seven having come on to be heard before this Court on the twenty-first and twenty-second days of January in the year of our Lord one thousand nine hundred and thirty-eight, in the presence of counsel as well for the Appellants as the Respondent, whereupon and upon hearing what was

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No. 12. Formal Judgment, 23rd May, 1938—*continued.*

alleged by counsel aforesaid this Court was pleased to direct that the said appeal should stand over for judgment, and the same coming on this day for judgment,

It is adjudged that the said appeal be and the same is dismissed and that the said judgment of The Honourable Mr. Justice Ewing be and the same is affirmed;

And it is further adjudged that the Respondent recover from the Appellants the costs incurred by the said Respondent in this appeal.

(Sgd.) R. P. WALLACE.
Registrar at Edmonton.

Entered this 25th day of May, A.D. 1938.

(Sgd.) R. P. WALLACE.
C.S.C.

No. 13. Reasons for Judgment. (A) Harvey C.J.A. (concurred in by Lunney J.A. and Shepherd J.), 23rd May, 1938.

No. 13.

Reasons for Judgment.

(A) HARVEY C.J.A. (concurred in by LUNNEY J.A. and SHEPHERD J.).

This is an appeal, in form, by the defendant, in substance, by the Attorney General from a Judgment of Ewing J., in which he held that certain Provincial Statutes were invalid, and gave the plaintiff the relief asked for.

The plaintiff is the holder of certain debentures bearing interest at the rate of 6 per cent. issued by the defendant district and guaranteed by the Province. On the 1st of November 1936, interest amounting to $5,430 fell due and in presentation of the coupons for payment, payment in full was refused. An action was brought and the defence set up was an Act of the Provincial Legislature passed on the 1st day of September 1936, called "The Provincial Securities Interest Act" which provided that from and after June 1st 1936, the rate of interest payable on securities on which the Province was liable directly or by guarantee should be as therein specified. The specification reduced the interest rate by one half in all cases where 4 per cent. or more was the contract rate and by approximately that amount where the rate was less than 4 per cent.

The Act also contained the provision that: "No action shall be brought or maintained in any Court of the Province in respect of any such security or for the purpose of enforcing any foreign judgment founded on any such security."

Notwithstanding this provision the action went to trial and the Act was held to be ultra vires by Ives J., and judgment was given for the amount of the claim with costs. The reasons for judgment are reported in 1937 1 W.W.R., at 414.

It is alleged in the statement of claim in the present action that notice of appeal from that judgment was given but was subsequently withdrawn, the Legislature having in the meantime repealed the Statute declared ultra vires and enacted new legislation in its place.

A few days prior to the judgment of Ives J., Ewing J., had delivered a judgment declaring another Act of the Legislature "The Reduction and Settlement of Debts Act 1936" ultra vires. Both Acts dealt with the subject of interest, the latter with regard to private contracts in respect of which the rates were reduced as in the other Act dealing with the Province's liabilities. In both cases the ground of invalidity was that the subject matter was "interest" which is by the British North America Act exclusively reserved for the Dominion Parliament.

The judgment of Ewing J., which is reported as *Royal Trust Company* vs. *Attorney General for Alberta*, 1937, 1 W.W.R. 376, was appealed and was affirmed by this Division sub nom. *Credit Foncier* vs. *Ross & Attorney General*, 1937, 2 W.W.R. 353, upon the ground that the Act was interest legislation as well as on other grounds.

In the meantime on the 14th of April, 1937, the legislature passed three Acts Chapters 11, 12 and 13 of the first session of that year. Chapter 13 entitled "The Provincial Securities Interest Act" repeals the act of the same name passed in the preceding year which had been held by the judgment of Ives J., to be *ultra vires*, and substitutes the provisions of the former Act, so far as they relate to direct liabilities of the Province. Chapter 12 entitled "The Provincial Guaranteed Securities Interest Act" re-enacts the provisions of the repealed invalid statute, so far as they relate to the indirect guaranteed liabilities of the Province, and Chapter 11 entitled "The Provincially Guaranteed Securities Proceedings Act," re-enacts in effect the prohibition of the repealed Act of access to the Courts by the holders of the guaranteed securities to enforce their rights.

It is Chapters 12 and 11 which are held *ultra vires* by the judgment now under appeal.

As regards Chapter 12 there is no room for argument. The subject matter of the Act is interest and interest alone and the case is concluded as far as this Province is concerned by the judgment of this Division in *Credit Foncier* (*supra*). The only room for argument is in respect of Chapter 11.

As the text is important and the Act is short it seems desirable to give its exact terms which are as follows:

> (1) This Act may be cited as "*The Provincially Guaranteed Securities Proceedings Act.*"
>
> (2) In this Act, unless the context otherwise requires, the expression "guaranteed securities" means any debentures which are guaranteed by the Province, save and except only an issue of debentures of The Alberta and Great Waterways Railway Company for the sum of Seven Million, Four Hundred Thousand Dollars, bearing interest at the rate of five per centum per annum.

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(3) Notwithstanding anything to the contrary in any Act or in any contract, and notwithstanding any rule of law or equity to the contrary, no action or proceeding of any kind or description shall be commenced, taken, instituted, maintained, or continued, for the purpose of the recovery of any money payable in respect of any guaranteed security, or for the purpose of enforcing any right or remedy whatsoever for the recovery of any such money, or for the purpose of enforcing any judgment or order at any time heretofore or hereafter given or made with respect to any guaranteed security, or for the purpose of enforcing any foreign judgment founded on a guaranteed security, without the consent of the Lieutenant Governor in Council.

(4) This Act shall come into force on the day upon which it is assented to.

The Statement of Claim alleges that by reason of the provisions of the said last mentioned Act the Clerk refused to tax the costs awarded it in the judgment of Ives J., and refused to issue an execution on its judgment. It further alleges that further interest fell due on the 1st of May 1937, of which it has been refused payment of more than half the amount. The claim is for payment of the judgment and costs under the judgment of Ives J., and for the additional interest payment, with a declaration of the invalidity of the two Acts in question.

The defence is simply the statutes reducing the interest and prohibiting the action without leave of the Lieutenant Governor in Council which it is alleged has not been obtained, and with the defence there was paid into Court $2,715, alleged to be the interest as 3 per cent. on the debenture, though it is in fact only interest at that rate for one of the interest amounts alleged to be past due and is no doubt intended to be in respect of the interest claimed for the first time in an action.

It seems not an unreasonable surmise from this that if leave had been applied for it would have been granted on the terms of limiting the claim to the reduced interest specified in the Statute.

It is contended that as the right to bring an action in the Provincial Courts is a civil right in the Province the Act falls clearly within Clause 13 of Section 92 of the B.N.A. Act and that as well it falls within Clause 14 dealing, as it does, with " procedure in civil matters in the Courts."

If the Statute stood alone it might be difficult to answer this argument and it is also argued that the constitutionality of the Act must be determined by reference to it without regard or reference to any other Statute.

It happens, however, that a few years ago an almost parallel case arose with reference to Dominion legislation when Parliament passed an Act which was declared *ultra vires* and thereafter to accomplish the same result by a separate Act under the guise of criminal law attempted to make the law effective. The Privy Council decided that that could not be done and that the purpose of the Act as well as its effect had to be considered.

The decision referred to is known as the *Reciprocal Insurers Case* [1924] A.C. 328.

In 1910 the Parliament of Canada had passed an Act which attempted to appropriate to itself the whole field of insurance in Canada. The validity of the Act was in question in *Attorney General for Canada* v. *Attorney General of Alberta*, [1916] 1 A.C. 588. The judgment was delivered by Lord Haldane and it held that the Dominion could not deprive the Provinces of the right to legislate on the subject of insurance within the Province. Following this judgment, in 1917 Parliament passed a new Insurance Act and at the same time "An Act to Amend the Criminal Code (Respecting Insurance)" which last mentioned Act made it an indictable offence for any person to transact insurance business except under the authority of a license from the Dominion Minister of Finance thus completely restoring the effect of the law theretofore declared unconstitutional. The Ontario Court upheld the amendment of the Code as being criminal law a subject over which Parliament had exclusive jurisdiction.

*The Privy Council disagreed with that view on the ground that calling it criminal law was only for the purpose of disguise. The judgment of the Board was delivered by the present Chief Justice of Canada. At p. 332 he says: "These two Statutes, which are complementary parts of a single legislative plan, are admittedly an attempt to produce by a different legislative procedure the results aimed at by the Authors of the Insurance Act of 1910, which in *Attorney General for Canada* v. *Attorney General for Alberta* [1916] 1 A.C. 588 were pronounced ultra vires of the Dominion Parliament."

Equally it may be said that the two Statutes in question in this appeal "are complementary parts of a single legislative plan" and are clearly (if not admittedly) an attempt to produce by a different legislative procedure the results arrived at by the authors of the "Provincial Securities Interest Act of 1936" which was expressly declared by the judgment of Ives J., and impliedly declared by the judgment of this Division ultra vires of the Legislature.

Again at p. 339 he says:

> "It is not seriously disputed that the purpose and effect of the amendment in question are to give compulsory force to the regulative measures of the Insurance Act, and their Lordships think it not open to controversy that in purpose and effect s. 508c is a measure regulating the exercise of civil rights. But on behalf of the Dominion, it is argued that, although such be the true character of the legislation, the jurisdiction of Parliament, in relation to the criminal law, is unlimited, in the sense, that in execution of its powers over that subject matter, the Dominion has authority to declare any act a crime, either in itself or by reference to the manner or the conditions in which the act is done, and consequently that s. 508c, being by

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* *Attorney General for Ontario* v. *Reciprocal Insurers* [1924] A.C. 328.

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its terms limited to the creation of criminal offences, falls within the jurisdiction of the Dominion."

and later :

"Such a procedure cannot, their Lordships think, be justified consistently with the governing principles of the Canadian Constitution, as enunciated and established by the judgments of this Board."

And finally at page 342 :

"In accordance with the principle inherent in these decisions their Lordships think it is no longer open to dispute that the Parliament of Canada cannot, by purporting to create penal sanctions under s. 91, head 27, appropriate to itself exclusively a field of jurisdiction in which, apart from such a procedure, it could exert no legal authority, and that if, when examined as a whole, legislation in form criminal is found, in aspects and for purposes exclusively within the Provincial sphere, to deal with matters committed to the Provinces, it cannot be upheld as valid."

This last extract was quoted and the principle applied by the Board composed of wholly different members in "*In re the Insurance Act of Canada*" [1931] A.C. 41, in which it was held that certain Dominion statutory provisions imposing taxation were ultra vires because though in the guise of taxation they were in reality interfering with Provincial rights respecting insurance. At page 51 it is stated in the judgment delivered by Lord Dunedin with reference to the *Reciprocal Insurers Case :*

"The case decided that a colourable use of the Criminal Code could not serve to disguise the real object of the legislation, which was to dominate the exercise of the business of insurance,"

and again (p. 52) :

"Now as to the power of the Dominion Parliament to impose taxation there is no doubt. But if the tax as imposed is linked up with an object which is illegal the tax for that purpose must fall."

See also *Attorney General for Alberta* vs. *Attorney General for Canada* [1928] A.C. 475.

It is clear from these decisions that for the purpose of determining the true character of the legislation "its pith and substance" in the words so often used the Court must have regard to its "object" and "purpose" as stated in the judgments as well as its effect and that to do so it is proper to consider its relation to other legislation past and present. The same rule was applied by the Supreme Court of Canada in its recent decision in *Re Alberta Legislation*, 1938, 2 D.L.R. 81.

It is true that in *Attorney General for Manitoba* vs. *Attorney General for Canada* [1929] A.C. 260, Lord Sumner in delivering the judgment of the Board used the expression (p. 268) : "The matter depends upon the effect of the legislation not upon its purpose."

Lord Sumner was a member of the Board which decided the *Reciprocal Insurers Case* and Lord Dunedin who wrote the judgment in *Re the Insurance Act of Canada* in 1931 was a member of the Board in the *Manitoba Case* in 1929 in both of which first two cases stress is laid upon the object or purpose. Lord Sumner when he said " the matter " was evidently referring to the case under consideration. He had previously pointed out that the object of the legislation was apparently praiseworthy but as the effect was to accomplish something for which the legislature had no authority its praiseworthy purpose could not save it. That is of course a quite different thing from saying the purpose is of no consequence when it as well as the effect is to exceed the legislative authority.

The clear purpose as well as the effect of Chapter 11 is to render fully effective Chapter 12 which is ultra vires.

It is not therefore in its true character proper legislation under either Clause 13 or 14, but in its purpose and effect is auxiliary to the illegal legislation respecting interest, and must fall with it.

The appeal should therefore be dismissed with costs.

" HORACE HARVEY." C.J.A.

Edmonton, May 23rd 1938.

I concur.

H. W. LUNNEY, J.A.

I concur.

S. J. SHEPHERD, J.

(B) FORD, J.A. : (B) Ford J.A.

The relevant facts and statutes involved in this appeal, as well as what may be called the background or history of the legislation, the validity and effect of which as applicable to the rights of the parties concerned are in question, are set out in the judgment appealed from (1937) 3 W.W.R., 424; (1937) 4 D.L.R. 398, and in the reasons for judgment of the Chief Justice which I have had the advantage of reading.

The question of how far afield the enquiry may go in considering whether under the pretence of legislating upon one or more of the matters enumerated in section 92 of the B.N.A. Act a provincial legislature is really legislating upon a matter assigned to the jurisdiction of the Parliament of Canada, has been recently dealt with by the Supreme Court of Canada in *The Alberta Legislation* 1938 (1938) 2 D.L.R. 81. *See also Toronto (City)* vs. *York Township and Attorney General for Ontario* (1938) 1 W.W.R. 452; (1938) 1 D.L.R. 593.

Whatever the limits of the enquiry may be, there is no doubt, in my opinion, that the enquiry is not to be confined to a consideration of the statute itself, however unambiguously framed. In the present instance I think we must take into account not only Chapter 12, passed at the same session, but also all the circumstances leading up to the enacting of Chapter 11 as set out in the judgment appealed from.

Without deciding whether I am obliged so to hold, having regard to the decision in *Credit Foncier* vs. *Ross and Attorney General* (1937) 3 D.L.R.

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365, I assume, for the purpose of my enquiry, that Chapter 12 is invalid as being legislation on the subject of " interest," a subject expressly reserved to the Parliament of Canada.

One of the reasons for holding the Reduction and Settlement of Debts Act wholly *ultra vires* without giving effect to a part of it which, if standing alone, might perhaps have been within the legislative power of the Province, was that to do so would leave the Act in such a " truncated " form (to use the expression of Lord Atkin in *Attorney General of British Columbia* vs. *Attorney General, Can.* Reference Re National Products Marketing Act, 1934 (1937) 1 D.L.R. 671), that the part remaining could not be said to be the expression of the legislative will. *See* the remarks of, and cases cited by, the Chief Justice in *Credit Foncier* vs. *Ross* (*supra*).

We are not now troubled with any difficulty of separation of valid from invalid parts of the same statute. Here we have the separate expression of the legislative will which, if it is not an attempt to do indirectly what the legislature cannot do directly, or is not a " colourable " means, disguised or apparent, to usurp a field of legislative power which does not belong to it, must be given effect to.

It is apparent that the Legislature desires to withdraw from the jurisdiction of the Court the enforcement in the Province of the civil rights created by the contracts in question, except with the consent of the Lieutenant Governor in Council. It does not follow that the consent will be refused unless the claim is limited so far as interest is concerned to the amount to which the Legislature has, competently or not, attempted to reduce it.

For a very interesting case of separating effective from ineffective portions of a statute, though the separation was not as between the legislative powers of the Dominion and the Province, *Toronto* (*City*) vs. *York Township* (*supra*) may be especially referred to.

It is important to consider certain of the cases in which what may be termed colourable attempts by the Dominion or a Province to invade the other's field have been held *ultra vires*, in order to find the real meaning of the principle.

With respect, I do not think the decision in *In re Insurance Act of Canada* [1931] A.C. 41, or that in any of the cases therein reviewed, affords a parallel to the case at bar.

In that case, following *Attorney General of Canada* vs. *Reciprocal Insurers* [1924] A.C. 328, it was held that what was there attempted was a colourable use of the Criminal Code, and of the power to legislate as to aliens, to intermeddle with, and indeed to dominate, the exercise of the business of insurance, the regulation of which had been in *Attorney General for Canada* vs. *Attorney General for Alberta* [1916] A.C. 588, " declared to be exclusively subject to provincial law."

In *Attorney General of Alberta* vs. *Attorney General for Canada* [1928] A.C. 475, the ground of the decision was that the Ultimate Heir Act, R.S.A., 1922, c. 44, which provided that the University of Alberta should be the ultimate heir of property in the Province upon failure of descent was *ultra*

vires, so far as it purported to deal with real property, on the ground that the Act was in substance one designed to defeat the right of the Crown, in the right of Canada, to escheats which up to 1930, by the proper construction of Section 21 of the Alberta Act, belonged to the Dominion, and not an exercise of the legislative authority in relation to the law of inheritance, the attempt being made " not by varying or extending the ordinary rules of succession . . . . . but by introducing outside all natural, lawful or conventional descendants or relations of the deceased an entirely foreign beneficiary and one in part, at least, dependent on the Provincial revenues."

In *Madden* vs. *The Nelson and Fort Sheppard Railway Co.* [1899] A.C. 626, a provision in the Cattle Protection Act of British Columbia, to the effect that in the absence of proper fences Dominion Railways would be held responsible for cattle injured or killed on their railway lines by their engines or trains, was held to be ultra vires of the Provincial Legislature. This was held to be an attempt to compel Dominion Railways to create works upon their roadways beyond what the Parliament of Canada had required of undertakings, the creation of which was wholly withdrawn from the provincial field. The decision of the Judicial Committee rendered at the same sittings in *Canadian Pacific Railway* vs. *Corporation of the Parish of Notre Dame de Bonsecours* [1899] A.C. 367, was distinguished. In that case it was pointed out that whilst the control of the railway quâ railway was given to the Parliament of the Dominion, there were many respects in which it was not exempted from the jurisdiction of the Provincial Legislatures.

Giving full effect to everything that has been said as to the field of enquiry and to the cases dealing with the question of so-called " colourable " legislation, I am of the opinion that the present is not the case of a colourable attempt to do something which the Provincial Legislature has no power to do.

There seems to be little if any room for doubt that if Chapter 11 stood alone, and there was nothing in its background or history, to which the Court would have the right to look to ascertain its " true nature and character," its " pith and substance," it would be legislation intra vires of the Provincial Legislature, and that this action, being one for the purpose of the recovery of money payable in respect of a guaranteed security as therein defined, the action must be dismissed for the reason that it has been commenced without the consent of the Lieutenant Governor in Council.

Unless it can be said that all provincial statutes of limitations of actions and all statutes such as our Debt Adjustment Acts requiring a permit of a Board before action can be brought, and all attempts to declare a " moratorium," are either inapplicable to, or are ultra vires so far as they purport to deal with, interest bearing debts, a proposition the statement of which carries its own negation, I do not see any ground for holding Chapter 11 ultra vires or ineffective for the purpose intended. *See Allen* vs. *Trust & Guarantee Co.* (Poponroff Estate) (1937) 2 W.W.R. 257, especially Harvey C.J.A. at p. 264.

The " true nature and character " of Chapter 11, its " pith and substance," is not the invasion of any Dominion legislative field, colourably

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or openly, but a frank expression of an intention to limit the enforcement in the Province of certain contractual rights.

In this connection, and on the case generally, the language of Sir Montague Smith in *Citizens Insurance Company of Canada* vs. *Parsons*, 7 A.C. 96 at p. 110, must always be kept in mind. Speaking for the Board and interpreting the words " civil rights " as used in Cl. 13 of Section 91 of the B.N.A. Act he said :

> " The words are sufficiently large to embrace, in their fair and ordinary meaning, rights arising from contract, and such rights are not included in express terms in any of the enumerated classes of subjects in Section 91."

It may be useful to refer briefly to certain underlying concepts which must be kept in mind in dealing with all cases involving a limitation or change in the jurisdiction of a Superior Court.

The constitution set up by the B.N.A. Act contemplates and indeed requires the continued existence of a Superior Court in each Province.

I am in entire agreement with both of the propositions laid down by Masten, J.A. in *Ottawa Valley Power Co.* vs. *The Hydro-Electric Power Commission* (1937) O.R. 265 at p. 309, where he said :

> " (1) The general rule is clear that the administration of justice being by The British North America Act committed to the Provinces, the jurisdiction of the several Courts set up by the Legislature to administer justice is that which is prescribed by the Legislature. Generally speaking any Statute passed by a Provincial Legislature limiting the jurisdiction of the Provincial Court is binding on it.
>
> (2) But to that general rule I think there is this exception, namely, that the Legislature cannot destroy, usurp, or derogate from substantive rights over which it has by the Canadian constitution no jurisdiction and then protect its action in that regard by enacting that no action can be brought in the Courts of the Province to inquire into the validity of its legislation, thus indirectly destroying the division of powers set forth in The British North America Act. In other words, it cannot by such indirect means destroy the constitution under which it was created and now exists. In the words of Sir John Simon, it is of the essence of the ' Canadian constitution that the determination of the legislative powers of the Dominion and of provinces respectively should not be withdrawn from the judiciary.' "

There is nothing in my judgment in *Royal Trust Co.* vs. *Attorney General of Alberta* (1936) 2 W.W.R. 337, to the contrary effect. Indeed, counsel before us seemed to admit that under the guise of legislating in regard to property and civil rights in the Province or the administration of justice and the procedure in civil matters in provincial courts, the legislature cannot withdraw from those courts the power and duty of enquiring into and determining the validity under the constitution of its legislative enactments ; and it is argued that Chapter 11 does not purport to do so.

In *Board* vs. *Board* [1919] A.C. 956, the principle is re-affirmed that " nothing shall be intended to be out of the jurisdiction of a Superior Court but that which specially appears to be so."

It was also there re-asserted that, if a right exists, " the presumption is that there is a court which can enforce it, for if no other mode of enforcing it is prescribed, that alone is sufficient to give jurisdiction to the King's Courts of Justice."

At p. 962 Lord Haldane said :

> " The right to divorce had, before the setting up of a supreme and superior Court of record in Alberta, been introduced into the substantive law of the Province. Their Lordships are of opinion that, in the absence of any explicit and valid legislative declaration that the Court was not to exercise jurisdiction in divorce, that Court was bound to entertain and to give effect to proceedings for making that right operative. Had the Legislature of the Province enacted that its tribunals were not to give effect to the right which the Dominion Parliament had conferred in the exercise of its exclusive jurisdiction, a serious question would have arisen as to whether such an enactment was valid. But not only is there no such enactment but, on the mere question of construction of the language of the Provincial Act of 1907, their Lordships are of opinion that a well-known rule makes it plain that the language there used ought to be interpreted as not excluding the jurisdiction. If the right exists, the presumption is that there is a Court which can enforce it, for if no other mode of enforcing it is prescribed, that alone is sufficient to give jurisdiction to the King's Courts of justice."

Of course such a difficulty, if it arises, can readily be set right by the Parliament of Canada imposing the duty on the Provincial Courts of giving effect to the right to divorce, if indeed the term, " Divorce," exclusively a Dominion subject, dealing as it does with status, is not to be given such a wide interpretation as to make such an express provision unnecessary.

In this connection it is interesting to note that with respect to the liability of chartered banks to pay dividends and repay deposits, it seems to have been thought necessary to provide in the Bank Act that the liability shall continue notwithstanding any statute of limitations or any law relating to prescription. This has been done as incidental or ancillary to the Dominion's power over Banking and the incorporation of Banks. The Bills of Exchange Act does not treat of limitations of actions or prescription as affecting bills and notes but leaves the law of each province to be applied within its bounds.

The authority of the Parliament of Canada to impose powers and duties on Provincial Courts may be stated thus :—

Notwithstanding the provisions of clause 14 of section 92 of the B.N.A. Act the Parliament of Canada can, in respect of matters within the Dominion sphere, and, in respect of matters which do not come within the subjects assigned exclusively to the Legislatures of the Provinces, impose new

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duties upon and give new powers to the Provincial Courts and the officials of the Provincial Courts. *Valin* vs. *Langlois*, 5 A.C. 11 *In re Vancini* 34 S.C.R. 621; *Regina* vs. *Toland* 22 O.R. 505; Lefroy's Legislative Power in Canada p. 510; Lefroy's Canada's Federal System 148.

It may well be that in the exercise of its jurisdiction to make laws in respect of "interest," and its power to impose additional duties on provincial courts, the Parliament of Canada can provide means for enforcing by legal process in the provincial courts, against the will of a provincial legislature, the payment of interest at any rate under any contract enforceable in Canada. If Section 2 of the Interest Act, having regard to the word "exact" as used therein, has that effect, it may be that, so far as it purports to prevent judgment being given for interest at the rate agreed upon in the contracts in question, Chapter 11 is ineffective. I do not think that Section 2 bears that meaning. If it does, it would be necessary to consider the very interesting question whether it would not be an unwarranted invasion of the provincial field. See note in Lefroy's Legislative Powers in Canada, p. 389, where the following appears:

> "In reference to this matter of 'interest,' attention may also be called to the footnote at p. 671 of Mr. Bourinot's Parliamentary Procedure and Practice, (2nd ed.), where he says: 'In 1886 a bill relating to interest on mortgages secured by real estate was withdrawn as ultra vires, the Minister of Justice having drawn attention to the fact that, among other objectionable features, one of the clauses contained a provision not relating to interest, properly speaking, but rather to contracts for the securing of money,—clearly a matter of provincial jurisdiction': Can. Hans., 1886, p. 440; Can. Com. Journ., 1886, p. 137. The bill here referred to was brought in to amend the Act 43 Vict., c. 42, D., s. 5, (now R.S.C., c. 127, s. 7), which provides that any mortgage may be discharged after five years, on a three months' bonus, though not in terms made payable till after that. It was this enactment as to which the Minister expressed the above view, and pointed out that the proposed amendment was open to the like objection."

Reference may also be made to Lefroy's Canada's Federal System at p. 277, where after referring to *Lynch* vs. *Canada North-West Land Company*, 19 S.C.R. 204; *Bradburn* vs. *Edinburgh Assurance Co.*, 5 O.L.R., 657; *Edgar* vs. *Central Bank*, 15 Ont. A.R. at p. 202, the learned author says:

> "We must await a Privy Council decision, however, for a finally authoritative interpretation of this Dominion power (i.e. 'Interest'). It would seem that the Minister of Justice himself questioned the validity of the above (Dominion) enactment upon the ground that it related 'not to interest, properly speaking, but rather to contracts for the securing of money—clearly a matter of provincial jurisdiction'."

Holding the view that, for the reasons stated, there is no conflict between The Interest Act of Canada and Chapter 11 in question here, I

am of the opinion that Chapter 11 is a valid exercise of the power to legislate given to the provincial legislatures by clauses 13 and 14 of Section 92 of the B.N.A. Act, which are as follows :

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 Criminal Jurisdiction, and including Procedure in Civil Matters in those Courts.

It follows that the appeal should be allowed and the action dismissed with costs here and below.

"FRANK FORD."
J.A.

Edmonton, May 23 1938.

JUDGMENT OF THE HONOURABLE MR. JUSTICE McGILLIVRAY.

(C) McGILLIVRAY J.A. :

(C) McGillivray J.A.

I have had the privilege of reading the judgments written by my Lord the Chief Justice of Alberta and by my brother Ford.

I agree with my Lord that Chapter 12 must be declared to be ultra vires because of the decision of this Court in the case *Credit Foncier* vs. *Ross and the Attorney General* 1937, 2 W.W.R. 353. This court has repeatedly held that it is bound by its own decisions and this decision is, in my view, a definite authority for the proposition that an enactment such as Chapter 12 is beyond the Legislative competence of a Provincial Legislature. I also agree with my Lord that Chapter 11 is ultra vires of the Provincial Legislature. In my opinion Chapter 11 is but part of a legislative scheme to give effect to a provincial enactment which the Provincial Legislature is without legislative authority to enact. It is not just a denial of rights to creditors except upon condition, but it is a somewhat frank defiance of the legislative limitations of Provincial Legislatures as fixed and determined at the time of Confederation.

If this Legislature having passed an Interest Act that has been held to be ultra vires may now re-enact it and make it effective by the simple expedient of denying access to the courts at the pleasure of the executive branch for those who seek the collection of the interest moneys which the ultra vires Act denied them then the whole scheme of confederation may be set at naught at the will of any Provincial Legislature.

It is unnecessary to express an opinion as to whether or not a Provincial Legislature may in any circumstances deny access to the courts, it is enough to say as pointed out in the case *Ottawa Valley Power Co.* vs. *The Hydro Electric Power Commission* (1937) O.R. 265, that the consideration of the legislative capacity of Parliament or of the Legislatures cannot be withdrawn from the Courts either by Parliament or Legislature. In my view this statement may rest upon the safe ground that by necessary implication from what has been said in the British North America Act the Superior Courts whose independence is thereby assured, are just as surely made the arbiters

In the Supreme Court of Alberta (Appellate Division).

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of the Constitutional validity of statutory enactments as Parliament and the Legislatures are made law enacting bodies. If, as I think, it is not open to question that neither Parliament nor Legislature may provide as the concluding words of an enactment that it shall be deemed to be intra vires by all courts in the country then neither the one nor the other of these legislative bodies can reach the same end by denying access to the courts for the determination of constitutional questions.

I shall not cover the same ground nor review the cases to which my Lord has referred which go to show the importance attaching to the " object " and " purpose " of an enactment when its constitutional validity is called into question, I merely desire to add that it seems to me that the decisions are not to the effect that a bad motive makes a bad statute, but rather to the effect that the invasion of the Provincial field of legislative authority by the Dominion or the invasion of the Dominion field by a Legislature is bad no matter how the particular enactment may be designated or disguised by the enacting body and once discovered in its true character the enactment must be placed in the category of legislative nullities to which it properly belongs. It is my opinion that Chapters 11 and 12 should be read together and that they deal with the subject of " interest " a subject committed to the exclusive legislative care of the Dominion quite as surely as if they were one enactment and so must be declared to be ultra vires of the Alberta legislature.

Even if Chapter 11 should not be considered as to its validity as if it were just in aid of Chapter 12 I would still say that, in my opinion, it is invalid and ineffectual insofar as it is an obstacle to prevent the collection of interest monies except with the consent of the Lieutenant Governor in Council. As this action is in the main about interest and as my brother Ford has expressed an opposite opinion, I shall state my reasons for the opinion which I hold.

Head 19 of Section 91 of the B.N.A. Act gives to the Parliament of Canada exclusive legislative authority over the subject of " interest."

In the exercise of this legislative authority the Dominion Parliament enacted the Interest Act, Chapter 102 R.S. 1927. Section 2 of this Act reads 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. R.S., c. 120, s. 2."

The word " exact " as used in the above quoted section must be given its ordinary meaning. It seems to me reasonably clear that this word as used in this Section contemplates that the person to whom interest is payable as stipulated for by him and allowed by the debtor may enforce payment thereof by the only method open of action in the courts.

In Webster's New International Dictionary I find amongst the meanings given to the word " exact " the following " to enforce the payment of " and in Murray's New English Dictionary " to demand and enforce the payment of."

If then the right to exact payment is a right to enforce payment the first question which arises is as to whether or not it is competent to the Dominion to grant such a right which will be effective notwithstanding a Provincial prohibition against enforcing payment or, as in the case at bar, what is in effect a prohibition without leave first obtained.

In this connection I quote the words of Lord Tomlin in delivering the judgment of the Judicial Committee in the case *Attorney General for Canada* vs. *Attorney General for British Columbia* [1930] A.C. 111 at 118 :

" Questions of conflict between the jurisdiction of the Parliament of the Dominion and provincial jurisdiction have frequently come before their Lordships' Board, and as the result of the decisions of the Board the following propositions may be stated :—

(1) The legislation of the Parliament of the Dominion, so long as it strictly relates to subjects of legislation expressly enumerated in s. 91, is of paramount authority even though it trenches upon matters assigned to the provincial legislature by s. 92 (*see Tennant* v. *Union Bank of Canada* [1894] A.C. 31).

(2) The general power of legislation conferred upon the Parliament of the Dominion by s. 91 of the Act in supplement of the power to legislate upon the subjects expressly enumerated must be strictly confined to such matters as are unquestionably of national interest and importance, and must not trench on any of the subjects enumerated in s. 92 as within the scope of provincial legislation unless these matters have attained such dimensions as to affect the body politic of the Dominion : (*see Attorney General for Ontario* v. *Attorney General for the Dominion* [1896] A.C. 348).

(3) It is within the competence of the Dominion Parliament to provide for matters which, though otherwise within the legislative competence of the provincial legislature, are necessarily incidental to effective legislation by the Parliament of the Dominion upon a subject of legislation expressly enumerated in s. 91 : (*see Attorney General of Ontario* v. *Attorney General for the Dominion* [1894] A.C. 189; and *Attorney General for Ontario* v. *Attorney General for the Dominion* [1896] A.C. 348.)

(4) 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 : (*see Grand Trunk Rly. of Canada* v. *Attorney General of Canada* [1907] A.C. 65.)"

The foregoing propositions leave no room for doubt as to the power of Parliament to legislate upon the subject of interest with " paramount authority " even though that legislation " trenches " upon property and civil rights and procedure in civil matters in the courts.

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No. 13. Reasons for Judgment. (C) McGillivray J.A., 23rd May, 1938—*continued.*

I am not forgetful as my brother Ford has pointed out, that this interpretation of the word "exact" might effect provincial statutes such as statutes of limitation and attempts to declare a moratorium. On the other hand it might be held that Provincial Statutes of this character which are of general application throughout the Province and which only deal with interest incidentally do not constitute an invasion of the field exclusively assigned to the Dominion under the head "interest." *See Attorney General for Manitoba* vs. *Manitoba Licence Holders Association* [1902] A.C. 73 and *Rex* vs. *Arcadia Coal* 1932, 2 D.L.R. 475. It is, however, quite unnecessary that I should now decide as to whether any statutes may be competently enacted by a Provincial Legislature which in any way touch the question of interest, it is enough to say that Chapter 11 is not a statute of general application but a statute dealing with Provincially guaranteed securities which makes it a condition precedent to the enforcement of payment of interest monies as is sought in the case at bar, that the leave of the Lieutenant Governor in Council be first obtained. In short, it is a statute which whether aimed at interest alone or not would have the effect of making it possible to deny the right of collection of interest monies under particular contracts at the rate stipulated for. This being so it seems to me to matter but little for the Respondents' purposes whether this legislation be called ultra vires as an invasion of the Dominion legislative field or ineffectual to prevent the Respondents' right to bring and pursue his action without leave to enforce payment of the interest monies due and payable because of clashing with the Dominion legislation the Interest Act which is of paramount authority.

I would dismiss the appeal with costs.

"A. A. McGillivray."
J.A.

Edmonton, Alberta, May 23, 1938.

In the Supreme Court of Alberta (Appellate Division).

No. 14. Order granting conditional leave to appeal to His Majesty in Council, 19th September, 1938.

No. 14.

Order granting conditional leave to appeal to His Majesty in Council.

IN THE APPELLATE DIVISION OF THE SUPREME COURT OF ALBERTA
JUDICIAL DISTRICT OF EDMONTON.

Between

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

and

THE BOARD OF TRUSTEES OF THE LETHBRIDGE NORTHERN IRRIGATION DISTRICT AND L. C. CHARLESWORTH, OFFICIAL TRUSTEE OF THE LETHBRIDGE NORTHERN IRRIGATION DISTRICT - - - - - - *Defendants (Appellants).*

Before :—THE HON. CHIEF JUSTICE HARVEY, THE HON. MR. JUSTICE CLARKE, THE HON. MR. JUSTICE FORD, THE HON. MR. JUSTICE LUNNEY, THE HON. MR. JUSTICE MCGILLIVRAY.

Dated at the Court House, City of Edmonton, in the Province of Alberta, this 19th day of September, 1938.

The application of the Defendants (Appellants) for leave to appeal to His Majesty in Council from the judgment of the Appellate Division of the Supreme Court of Alberta, dated the 23rd day of May, A.D. 1938, and entered the 25th day of May, 1938, having come on for hearing before this honourable court at the sittings thereof holden in the City of Calgary on the 6th day of June, 1938, and having been adjourned to this date, and having now come on for hearing before this honourable court.

Upon hearing read the pleadings and proceedings herein, and upon hearing counsel for the Defendants (Appellants) as well as for the Plaintiff (Respondent),

This Court doth order that the Defendants (Appellants) do have leave to appeal to His Majesty in Council upon the following conditions :

(*a*) That the Defendants (Appellants) do within three (3) months from the date of this Order enter into a good and sufficient security to the satisfaction of this Court in the sum of Two Thousand Five Hundred Dollars, ($2,500.00) for the due prosecution of the appeal, and the payment of all such costs as may be payable to the Plaintiff (Respondent) in the event of the Defendants (Appellants) not obtaining an Order granting them final leave to appeal, or of the appeal being dismissed for non-prosecution, or of His Majesty in Council ordering the Defendants (Appellants) to pay the Plaintiff's (Respondent's) costs of the appeal.

In the Supreme Court of Alberta (Appellate Division).

No. 14. Order granting conditional leave to appeal to His Majesty in Council, 19th September, 1938—*continued*.

(*b*) That the Defendants (Appellants) within the period of three (3) months of the date hereof take the necessary steps for the purpose of procuring preparation of the Record and the dispatch thereof to England.

It is further ordered that the costs of this Order and the application therefor shall be costs in the cause in the said appeal to His Majesty in Council.

(Sgd.) R. P. WALLACE.
Registrar of the Appellate Division,
Edmonton, Alberta.

Entered this 24th day of September, A.D. 1938.

(Sgd.) R. P. WALLACE.
C.S.C.

No. 15. Registrar's Certificate as to compliance with Order granting conditional leave to appeal to His Majesty in Council, 22nd November, 1938.

No. 15.

Registrar's Certificate as to compliance with order granting conditional leave to appeal to His Majesty in Council.

IN THE APPELLATE DIVISION OF THE SUPREME COURT OF ALBERTA
JUDICIAL DISTRICT OF EDMONTON.

Between

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

and

THE BOARD OF TRUSTEES OF THE LETHBRIDGE NORTHERN IRRIGATION DISTRICT AND L. C. CHARLESWORTH, OFFICIAL TRUSTEE OF THE LETHBRIDGE NORTHERN IRRIGATION DISTRICT - - - - - - - *Defendants (Appellants)*.

In pursuance of the Order of this Honourable Court dated the 19th day of September, A.D. 1938, and entered on the 24th day of September, A.D. 1938, granting the Defendants conditional leave to appeal to His Majesty in Council, I beg to report that I find as follows :—

1. The Defendants have deposited in Court to the credit of the above action, the sum of Twenty-five Hundred ($2,500.00) Dollars for the due prosecution of the Appeal herein by the Defendants to His Majesty in Council from the Judgment of this Honourable Court pronounced on the 23rd day of May, A.D. 1938, and entered on the 25th day of May, A.D. 1938, and for the payment of all such costs as may be payable to the Plaintiff (Respondent) in the event of the Defendants (Appellants) not obtaining an Order granting them final leave to appeal or of the appeal being dismissed for non-prosecution, or of His Majesty in Council ordering the Defendants

(Appellants) to pay the Plaintiff (Respondent) costs of the appeal as the case may be.

2. The Defendants (Appellants) have up to the date hereof, done all acts as prescribed to enable them to complete the Record and the dispatch thereof to England.

3. The Defendants (Appellants) are satisfied that a copy of the said Record has been placed in the hands of the Court Reporters in Edmonton and that a copy of the said Record will be made not later than the 15th day of December, A.D. 1938.

All of which I humbly certify to this Honourable Court.

Dated at the City of Edmonton in the Province of Alberta this 22nd day of November, A.D. 1938.

(Sgd.) R. P. WALLACE.
Registrar of the Appellate Division of the Supreme Court of Alberta, at Edmonton.

In the Supreme Court of Alberta (Appellate Division).

No. 15. Registrar's Certificate as to compliance with Order granting conditional leave to appeal to His Majesty in Council, 22nd November, 1938 —*continued*.

No. 16.

Order granting final leave to appeal to His Majesty in Council.

No. 16. Order granting final leave to appeal to His Majesty in Council, 28th November, 1938.

IN THE APPELLATE DIVISION OF THE SUPREME COURT OF ALBERTA.

Between :

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

and

THE BOARD OF TRUSTEES OF THE LETHBRIDGE NORTHERN IRRIGATION DISTRICT AND L. C. CHARLESWORTH OFFICIAL TRUSTEE OF THE LETHBRIDGE NORTHERN IRRIGATION DISTRICT - - - - - - - - *Defendants (Appellants)*.

Before : THE HON. CHIEF JUSTICE HARVEY; THE HON. MR. JUSTICE CLARKE; THE HON. MR. JUSTICE FORD.

Dated at the Court House, City of Calgary, in the Province of Alberta, this 28th day of November, A.D. 1938.

Upon the application of counsel on behalf of the Defendants (Appellants) for a final Order for leave to appeal to His Majesty in Council from the Judgment of this Honourable Court pronounced the 23rd day of May, A.D. 1938, and entered on the 25th day of May, A.D. 1938;

And upon reading the Order granting conditional leave to appeal herein dated the 19th day of September, A.D. 1938, and entered the 24th day of September, A.D. 1938, and the Certificate of the Registrar of this Court

In the Supreme Court of Alberta (Appellate Division).

No. 16. Order granting final leave to appeal to His Majesty in Council, 28th November, 1938—*continued.*

at Edmonton dated the 22nd day of November 1938, and it being shown that the preparation of a copy of the Record is being proceeded with;

And upon hearing Counsel for the Defendants (Appellants) and it appearing that Counsel for the Plaintiff (Respondent) has approved of and consented to this Order;

This Court doth order that final leave to appeal to His Majesty in Council as applied for be granted to the Defendants (Appellants) herein;

And it appearing that the printing of the Record is to be proceeded with in England;

This Court doth further Order that the Defendants (Appellants) do complete the copy of the said Record and instruct the Registrar of the Appellate Division of the Supreme Court of Alberta at Edmonton to transmit to the Registrar of the Privy Council one certified copy of such Record on or before the 15th day of December, A.D. 1938.

(Sgd.) R. P. WALLACE.
Registrar of the Appellate Division of the Supreme Court of Alberta at Edmonton.

Entered this 3rd day of December, A.D. 1938.

" R. P. WALLACE."
C.S.C. (Seal).

(Intld.) H.H.
C.J.A.

No. 17.

No. 17.

17.—Registrar's Certificate. 6th December, 1938.

(Not printed.)

In the Privy Council.

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.*

RECORD OF PROCEEDINGS.

BLAKE & REDDEN,
17, Victoria Street, S.W.1.
For Appellants.

CHARLES RUSSELL & CO.,
37, Norfolk Street, W.C.2.
For Respondent.

EYRE AND SPOTTISWOODE LIMITED, EAST HARDING STREET, E.C.4.