# In the Privy Council.

No. 45 of 1939.



# ON APPEAL FROM THE SUPREME COURT OF ALBERTA APPELLATE DIVISION.

BETWEEN

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

AND

THE INDEPENDENT ORDER OF FORESTERS (A BODY CORPORATE) - - - - - - - - (*Suppliant*) *Respondent.*

# RECORD OF PROCEEDINGS.

## INDEX OF REFERENCE.



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## EXHIBIT.

# In the Privy Council.

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BETWEEN

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

AND

THE INDEPENDENT ORDER OF FORESTERS (A BODY CORPORATE) - - - - - - - (*Suppliant*) *Respondent.*

# RECORD OF PROCEEDINGS.

*In the Supreme Court of Alberta.*

No. 1.

Petition of Right, 22nd June, 1938.

## No. 1.

## Petition of Right.

IN THE SUPREME COURT OF ALBERTA

To the King's Most Excellent Majesty:

The humble petition of the Independent Order of Foresters, a body corporated with Head Office at the City of Toronto, in the Province of Ontario, by its solicitor, George H. Steer, of the City of Edmonton in the Province of Alberta, one of His Majesty's Counsel in the Province of Alberta,

Sheweth that:

1. Your suppliant is a body corporate, incorporated in accordance with the provisions of the Independent Order of Foresters Consolidated Act 3 & 4 Geo. V., being Chapter 113 of the Statutes of Canada, 1913, which has its head office at 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 of 1926.

2. Your suppliant at its head office in the City of Toronto is the bearer bona fide holder and owner of debentures of the Province of Alberta in the aggregate principal sum of $373,000.00.

*In the Supreme Court of Alberta.*

No. 1.

Petition of Right, 22nd June, 1938— *continued.*

3. The said debentures were lawfully issued pursuant to the Provincial Loans Act and the respective statutes of Alberta and Orders of the Lieutenant Governor in Council authorizing such debentures, and prior to the issue of the said debentures all formalities in respect of such issue had been fully complied with.

4. By the terms of each of the said debentures, the Province of Alberta covenanted and promised to pay to the bearer thereof at the times and places in the said debentures respectively provided, interest at the rate in the said debentures respectively provided and hereinafter specified and payable while the principal sum remains unpaid.

5. Since the first day of June, 1936, as the interest coupons on the said debentures have matured, your suppliant has duly presented the same for payment, but in breach of its covenant in the said bonds in that behalf, the Province of Alberta has refused to pay the amounts specified in the said coupons and has otherwise failed to pay the interest agreed to be paid as aforesaid and has defaulted under the terms of the said Bonds.

6. Particulars of the said debentures, and the amount of interest in default thereon as of the date of this petition, are as follows :

| Par. | Description | Unpaid Coupons |
|---|---|---|
| $ 1,000.00 | 5% due February 15, 1940 | $ 100.00 |
| 25,000.00 | 5% due April 15, 1950 | 2,500.00 |
| 25,000.00 | 6% due April 1, 1936 | 3,000.00 |
| 33,000.00 | 5½% due January 1, 1947 | 4,537.50 |
| 3,000.00 | 6% due April 1, 1936 | 360.00 |
| 37,000.00 | 4½% due January 15, 1946 | 3,330.00 |
| 57,000.00 | 5% due October 1, 1959 | 5,700.00 |
| 63,000.00 | 4½% due October 1, 1951 | 5,670.00 |
| 25,000.00 | 4½% due April 1, 1961 | 2,250.00 |
| 25,000.00 | 4½% due June 1, 1967 | 1,687.50 |
| 25,000.00 | 4½% due October 1, 1956 | 2,250.00 |
| 25,000.00 | 4½% due July 16, 1958 | 2,250.00 |
| 15,000.00 | 6% due October 1, 1941 | 1,350.00 |
| 9,000.00 | 6% due March 1, 1947 | 810.00 |
| 5,000.00 | 6% due September 1, 1941 | 450.00 |
| $373,000.00 | Total . . . . . | $36,245.00 |

7. The said sum of $36,245.00 is justly due and owing by the Province of Alberta to your suppliant, and your petitioner believes that it is not paid because of the provisions of The Provincial Securities Interest Act, 1937, being Chapter 13 of the Statutes of Alberta 1937.

8. Your suppliant respectfully claims the said Statute to be ultra vires the Legislature of the Province of Alberta and seeks a declaration of the Supreme Court of Alberta to that effect.

Your suppliant therefore humbly prays that Your Majesty may be graciously pleased to direct this petition to be endorsed with your Majesty's fiat that right be done.

Your suppliant humbly proposes that this petition be tried at the City of Edmonton, in the Province of Alberta.

DATED this 22nd day of June, A.D. 1938.

Independent Order of Foresters,

By its Solicitor,

"GEO. H. STEER."

AFFIDAVIT OF G. H. STEER.

I, GEORGE H. STEER, of the City of Edmonton, in the Province of Alberta, Solicitor for the within Suppliant, make oath and say that the facts and matters and things in the within-named Petition set forth and contained are true to the best of my knowledge and belief.

Sworn before me at the City of Edmonton, in the Province of Alberta, this 22nd day of June, A.D. 1938.

"F. P. CAMPBELL."

A Commissioner for Oaths.

"GEO. H. STEER."

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**No. 2.**

**Statement of Defence.**



The Defendant says:

1. That he admits the allegations contained in paragraphs one to four inclusive of the petition herein.

2. As to paragraph five he admits that the Suppliant has duly presented for payment the said interest coupons set out in the petition and that the Province of Alberta has refused to pay the full amounts specified in the said coupons, but denies that such refusal was in breach of its covenant in the said bonds in that behalf and further says that the provisions with respect to interest contained in the said bonds were amended by the provisions of Section 3 of the Provincial Securities Interest Act 1937, being Chapter 13 of the Statutes of Alberta 1937, and that the said Province of Alberta tendered in payment to the Suppliant the amount of interest owing to the said Suppliant pursuant to the covenant in the said bonds in that behalf as modified by the provisions of the said Act.

3. Further as to paragraph five that he denies that the Province of Alberta has defaulted under the terms of the said bonds as amended by said Statute.

4. That he denies that the said sum of $36,245.00 is justly due and owing by the Province of Alberta to the Suppliant but says that the amount owing with respect to the payments set out in paragraph six of the petition

*In the Supreme Court of Alberta.*

No. 2.

Statement of Defence, 18th January, 1939—*continued.*

is one half of the said sum of $36,245.00 or $18,122.50 which sum was tendered to the petitioner on presentation from time to time of the said coupons.

5. That he denies that the said Statute referred to in paragraph two hereof is ultra vires the Legislature of the Province of Alberta but says that the said Statute was validly enacted under the authority given to the Legislature of the Province of Alberta by Section 92 of the British North America Act, Chapter 3 of 30 and 31 Victoria (Imp.), the British North America Act 1871, Chapter 28 of 34 and 35 Victoria (Imp.) and by the Alberta Act, 4 and 5 Edward VII (Dom.).

The defendant, therefore, prays that the Suppliant's claim for a declaration that the said Statute is ultra vires the Legislature of the Province of Alberta be dismissed.

DATED and DELIVERED at Edmonton, Alberta, this 18th day of January, A.D. 1939, by W. S. Gray, Edmonton, Solicitor for His Majesty's Attorney General for Alberta, whose address for service is at the Department of the Attorney General, Government Buildings, Edmonton, Alberta.

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No. 3.

Admissions of the parties. 1st February, 1939.

**No. 3.**

**Admissions of the Parties.**

The following admissions are made for the purposes of this Petition by counsel for the parties, namely, (*a*) that the interest coupons of the debentures referred to in the Petititon of Right herein were duly presented by the Suppliant for payment at the principal office of the Imperial Bank of Canada in Toronto, in the Province of Ontario, being one of the places where according to their tenor the principal and interest of the said debentures are payable, and that the payment of the full amount of such interest was refused but that payment of one-half of such interest was tendered by the said bank to the Suppliant and by the Suppliant refused. (*b*) That the said debentures were issued by the Province of Alberta prior to April 14th, 1937. (*c*) The said debentures referred to in the Petition of Right were all executed at Edmonton, in the Province of Alberta, and the exhibit admitted by consent at the trial of this action, namely, a certified copy of Order in Council and a form of debenture issued pursuant thereto, relates to the debenture issue due January 1st, 1947, referred to in the Petition of Right and is typical of Orders in Council and debentures relating to the other issues referred to in the Petition of Right.

Dated at the City of Edmonton, in the Province of Alberta, this 1st day of February, A.D. 1939.

"GEO. H. STEER"
Counsel for the Suppliant.

"W. S. GRAY"
Counsel for the Defendant.

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## No. 4.

### Reasons for judgment of Shepherd J.

*In the Supreme Court of Alberta*

No. 4. Reasons for judgment of Shepherd J.

This is a proceeding by way of petition by The Independent Order of Foresters, a body corporate, incorporated in accordance with the provisions of The Independent Order of Foresters Consolidated Act, 3 & 4 George V, being Chapter 113, Statutes of Canada, 1913, and having its head office at Toronto in the Province of Ontario, and duly licensed to do business in Alberta.

By its petition the suppliant claims that the Provincial Securities Interest Act, 1937, being Chapter 13 of the Statutes of Alberta, 1937, is ultra vires the Alberta Legislature, and seeks a declaration of the Court to that effect. The petition is endorsed,— " Let right be done. Edmonton January 13, 1939, William Aberhart, Attorney General for Alberta."

The suppliant at its head office in Toronto is the owner of debentures of the Province of Alberta in the aggregate principal sum of $373,000, which debentures were lawfully issued by the Province pursuant to the Provincial Loans Act, and the respective Statutes of Alberta and Orders of the Lieutenant-Governor in Council. The debentures in question bear different dates and carry different rate of interest as therein provided. Since June 1st, 1936, the suppliant has duly presented for payment its interest coupons on the said debentures, but the province has refused to pay the amount specified in said coupons and has otherwise failed to pay the interest agreed to be paid, but the defendant has tendered in payment one-half of the amount claimed.

In justification of its refusal to pay the interest called for by the coupons, the defendant pleads the provisions of the said Provincial Securities Interest Act, 1937, Section 3 of which enacts :

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

Then follows several sub-paragraphs which provide for reducing the rates of interest by one-half in practically all securities as defined by Section 2 of the Act. Section 3 (2) of the Act, further provides :

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

A brief history of this legislation is of interest. At the second session, 1936, of the Alberta Legislature, an Act was passed entitled, " The Provincial Securities Interest Act, being Chapter 11 of that session, which Act was similar to the one in question here except that it included all debentures guaranteed by the province excepting certain debentures of the Alberta and Great Waterways Railway Company, and a provision prohibiting the bringing of any action in any court in the Province in respect of the

*In the Supreme Court of Alberta.*

No. 4. Reasons for judgment of Shepherd J. —*continued.*

securities it affected. This Act of 1936, was held to be wholly ultra vires the Legislature, by Ives, J., in *Independent Order of Foresters* vs. *Board of Trustees of the Lethbridge Northern Irrigation District* et al, 1937, 1 W.W.R. p. 414. No appeal from this judgment was taken, but in the following session of the Legislature, the Act in question in these proceedings was passed, being assented to April 14, 1937, and at the same session in 1937, the Legislature also passed the Provincial Guaranteed Securities Interest Act. In the result, there were then two Acts of the Legislature taking the place of the one Act of 1936, which as noted above was held to be wholly ultra vires by Ives, J. One of these Acts of 1937, being the one in question here, dealt with the direct liabilities of the Province and the other its liabilities by way of guarantee. Each of which reduced the rate of interest payable on the securities, the respective Acts were designed to affect, by approximately one-half.

In another action, namely, *Independent Order of Foresters* vs. *Lethbridge Northern Irrigation District*, et al, No. 2, reported in 1938, 2 W. W. R. p. 194, the Appellate Division of this Court, Ford J., dissenting, affirming the judgment of Ewing, J., reported in 1937, 3 W. W. R. p. 424, held the Provincial Guaranteed Securities Interest Act of 1937 to be ultra vires the Legislature of Alberta.

Counsel for the Crown argues that these decisions can have no bearing on the case at bar; that the decision of the question of the validity of Chapter 13, the Provincial Securities Interest Act, 1937, is not hampered by any previous decisions of this Court in that Section 2 of The Interest Act, R. S. C. Chapter 102, does not apply to the Crown. In support of this contention, he cites section 16, Chapter 1, R. S. C. 1927, The Interpretation Act, which reads :—

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

Under Section 91 of The British North America Act, the exclusive legislative authority of the Parliament of Canada extends to all matters coming within the classes of subjects next hereinafter enumerated and the classes of subjects so enumerated includes interest, sub-section 19.

It has been repeatedly held by the Courts that in respect of interest, the field is occupied by the Parliament of Canada and the Provincial Legislature has no right to enter therein. In view of this I do not see how Section 16 of The Interpretation Act supra, can avail the defendant in these proceedings for surely the Crown in the right of the Province is bound by the terms of The British North America Act which explicitly assigns to Parliament the exclusive legislative authority in respect of interest. The suppliant seeks only a declaration that The Provincial Securities Interest Act, 1937, is ultra vires the Legislature of Alberta, and I am of the opinion that such a declaration must be granted.

The Act in question is ultra vires not only for the reason it is interest legislation, but for the further reason that the suppliant's right is a civil right outside the Province and the Legislature cannot legislate validly in derogation of that right. *Royal Bank of Canada* vs. *The King*, [1913], A. C. 283.

The declaration asked for is granted with costs, which, in view of the importance of the matter, shall be taxed under Column 5. Rule 27 to be excluded on the taxation.

(Sgd) S. J. SHEPHERD,
J.S.C.

Calgary.
February 11, 1939.

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**No. 5.**

**Formal Order.**

No. 5.
Formal Order, 11th February, 1939.

Before THE HONOURABLE MR. JUSTICE SHEPHERD at EDMONTON.

Saturday, the 11th day of February, A.D. 1939.

These proceedings, under the provisions of the Alberta Petition of Right Act, being Chapter 94 of the Revised Statutes of Alberta, 1922, having come on for trial on the 2nd day of February A.D. 1939, at the City of Edmonton before this Court at the Sittings thereof for trial of actions without a jury, in the presence of counsel for the Suppliant and counsel for the Defendant; upon hearing the Petition of Right of the Suppliant and the pleadings herein, the admissions made by the parties, and what was alleged by counsel as aforesaid, this Court was pleased to direct that these proceedings stand over for judgment, and the same coming on this day for Judgment.

It is ordered and adjudged that the Suppliant is entitled to the whole of the relief sought by its Petition.

It is ordered and adjudged that the Provincial Securities Interest Act 1937, being Chapter 13 of the Statutes of Alberta 1937, is *ultra vires* of the Legislature of the Province of Alberta.

It is ordered and adjudged that the Suppliant is entitled to recover the costs of and incidental to these proceedings against the defendant forthwith after the taxation thereof, such costs to be taxed under the fifth 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 18th day of February A.D. 1939.

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

Approved as to form Feb. 15/39.

" W. S. GRAY "
For the Crown.

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*In the Supreme Court of Alberta.*

No. 6. Notice of Appeal, 17th February, 1939.

## No. 6.

### Notice of Appeal.

Take notice that His Majesty the King, the Defendant herein, proposes to appeal and hereby does appeal to the Appellate Division of the Supreme Court of Alberta from the decision of the Honourable Mr. Justice Shepherd, delivered on the 11th day of February A.D. 1939, allowing the Suppliant's claim herein and declaring the Provincial Securities Interest Act 1937, being Chapter 13 of the Statutes of Alberta 1937, *ultra vires* the Legislature of the Province and from the judgment entered pursuant thereto on the 18th day of February A.D. 1939;

And further take notice that on the hearing of the said appeal the Defendant will ask for an Order of the Appellate Division setting aside the said judgment and declaring the said Statute to be *intra vires* the Legislature of the Province;

The said application will be made on the following grounds and upon such other grounds as Counsel may be advised:

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

2. That the learned Trial Judge erred in the following respects:

(*a*) In holding that the Provincial Securities Interest Act 1937, being Chapter 13 of the Statutes of Alberta 1937, is *ultra vires* the Legislature of the Province.

(*b*) In holding that the said Statute is in its pith and substance legislation relating to interest within the meaning of that word in sub-head 19, of section 91, of the British North America Act.

(*c*) In not holding that the said Provincial Securities Interest Act 1937 is *intra vires* the Legislature of the Province as being legislation enacted under the authority of sub-heads 3, 13, 14 and 16, of Section 92, of the British North America Act.

(*d*) In holding that the said Provincial Securities Interest Act 1937 is in conflict with Section 2 of the Interest Act, Chapter 102, of the Revised Statutes of Canada, when said Section is properly construed.

(*e*) In not holding that said Section 2 of the Interest Act, if given the meaning contended for by the Suppliant, is *ultra vires* the Parliament of Canada.

(*f*) In holding that said Section 2 of the Interest Act applies to the Crown in the right of the Province.

(*g*) In not holding that the Provincial Securities Interest Act 1937 is within the legislative authority of the Province as being a limited assertion of a prerogative which the Crown possessed prior to the passing of said Act, namely the right to refuse to consent or the right to give a limited consent to actions being brought against it.

(*h*) In not holding that the Statute in question is in its pith and substance an Act not dealing with interest as a subject assigned

to Parliament but with Provincial contracts or obligations issued under the provisions of the Provincial Loans Act, Revised Statutes of Alberta 1922, Chapter 42 (authorized by sub-head 3 of Section 92, of the British North America Act) under the authority of which the interest payable on said contracts or obligations was fixed and that the Statute in question merely alters rates of interest so fixed with respect to said contracts or obligations.

(*i*) In not holding that the said Provincial Securities Interest Act 1937 dealing as it does only with certain specific contracts or obligations and particularly contracts of the Crown, while affecting interest are within the legislative competence of the Province as dealing with matters coming within sub-heads 3, 13, 14 and 16 of Section 92, of the British North America Act.

(*k*) In holding that the said Provincial Securities Interest Act 1937 affects civil rights outside the Province of Alberta and in not holding that the only enforceable civil right of the Suppliant with respect to said obligations is within Alberta.

(*l*) In not holding that the law applicable to the obligation under the said contracts is the law of Alberta and that such law governs said obligations irrespective of the place of payment of the said debentures.

(*m*) In holding that the whole field of legislation as to interest has been occupied by Parliament and that the Provincial Legislature is, therefore, excluded from such field.

(*n*) In not giving due effect to the " double aspect " rule laid down by the Courts and in not holding that the Province has a right to legislate affecting interest in the manner it has done in the said Statute.

Dated at the City of Edmonton, in the Province of Alberta, this 17th day of February A.D. 1939.

W. S. GRAY,

Solicitor for the Defendant (Appellant).

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**No. 7.**

No. 7.

**Agreement as to Contents of Appeal Book, 18th February, 1939.**

(*Not printed.*)

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*In the Supreme Court of Alberta.*

No. 8.

## No. 8.

## Certificate of Clerk of the Court.

(*Not printed.*)

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*In the Supreme Court of Alberta. (Appellate Division).*

No. 9. Appellant's Factum.

## No. 9.

## Appellant's Factum.

STATEMENT OF FACTS.

There is no dispute about the facts, which are set out in the pleadings. The Statute in question is Chapter 13 of the Statutes of Alberta 1937. Section 3 provides that notwithstanding any stipulation or agreement as to the rate of interest payable in respect of any security the rate shall be a lesser one as set out in the Section and Sub-Section (2) of the said Section reads as follows :

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

The procedure leading up to the issue of bonds or debentures, such as those referred to in the Petition of Right, is found in Section 4 of the Provincial Loans Act, Chapter 42, of the Revised Statutes of Alberta 1922, which reads in part as follows :

> " (1) Where in any Act authority is given to the Lieutenant Governor in Council to raise by way of loan any sum of money, then, unless there is some provision to the contrary in the Act by which the authority is given, such sum shall in the discretion of the Lieutenant Governor in Council be raised in one of the following ways, or partly in one and partly in another or others thereof, that is to say :
>
> > (*a*) By the issue and sale of bonds or debentures of the Province of Alberta, which shall be in such form, for such separate sums, and at such rate of interest and of which the principal and interest shall be made payable at such periods and places as the Lieutenant Governor in Council deems expedient and subject to such regulations, including regulations as to inscription, registration and transfer, as he may make, which principal and interest shall be charged on and paid out of the general revenue fund."

A typical Order in Council passed under this Section and a typical form of debenture are by consent included in the Appeal Book.

PRIVY COUNCIL OFFICE,

WHITEHALL,

191 .

(48,180). Wt.23,089—14. 500. 11/11. A.&E.W.
(52,175). „ 33,598—9. 1000. 2/12. „

PRIVY COUNCIL OFFICE,

WHITEHALL,

191 .

(48,180). Wt.23,089—14. 500. 11/11. A.&E.W.
(52,175). ,, 33,598—9. 1000. 2/12. ,,

ARGUMENT.

In the Act under consideration there is only one Section which has to be considered in determining its constitutionality, viz. Section 3. Section 3 (1) declares that notwithstanding any stipulation or agreement as to the rate of interest payable on provincial debentures, the interest payable shall be at a lower rate and Sub-Section 2 provides that no person shall be entitled to recover interest on such debentures at a higher rate than that set out in the said Statute.

As McGillivray, J.A., said in delivering the judgment of the Court in *Rex* v. *Arcadia Coal Company, Limited* (1932) 1 W.W.R., 771, 781 :

> " .....When a provincial Act is impeached, as in the case at bar, the first question to be decided is whether the enactment is in respect of a matter coming within the classes of subjects enumerated in Sec. 92.....If a provincial Act prima facie falls within the classes of subjects dealt with in Sec. 92, as I have no doubt this Act does, the further question to be decided is : Does the subject of the Act also fall within the enumerated classes of subjects in Sec. 91 and if it does is it or is it not thereby overborne ?....."

It is submitted on behalf of the Crown :

1. That the Act in question is in respect to a matter coming within Section 92 of the British North America Act and particularly some or all of sub-heads :—

> " 3. The borrowing of money on the sole credit of the province.
> " 13. Property and civil rights in the province.
> " 14. The administration of justice in the province, including the constitution, maintenance and organisation of provincial Courts, both of civil and 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 further submitted that the Act is a limited exercise of the prerogative of the Crown and in that sense, in effect an amendment to the Petition of Right Act. Even if the subject-matter of the Act may also come within Section 91, both Provincial Legislature and Parliament may legislate on the subject-matter in different aspects of same, and Provincial legislation will be valid unless overborne by valid Dominion legislation on the same matter.

2. That the said Act does not come within the substance of any of the classes of subjects set out in Section 91, that in its pith and substance it is not legislation relating to interest within the meaning of that word in sub-head 19 of Section 91.

3. That there is no conflict between the said Act and Section 2 of the Interest Act because that Section cannot be justified on the ground that is necessarily incidental to a validly enacted statute relating to interest and

*In the Supreme Court of Alberta (Appellate Division).*

No. 9. Appellant's Factum—*continued.*

is, therefore, ultra vires as trenching upon the field of legislation assigned to the provinces under the sub-heads of Section 92 above quoted. In the alternative because Section 2, when its history is examined, is not open to the construction placed upon it in decisions of this Court. Its effect is merely to make clear that no penalties may be imposed for excessive interest, except as provided in the Act itself and other Dominion statutes. In the further alternative because Section 2 of the Interest Act does not apply to the Crown. In brief, that even if Parliament could occupy the field in such a way as to override the Provincial Act, it has not done so.

4. That the Act in question does not derogate from any civil right outside the province, as held by the learned trial Judge.

1. As pointed out above the Act amends a contract made by the Crown in the right of the Province and provides that no interest can be recovered at a higher rate than that set out in the Act. The debentures in question were issued under the authority of the Provincial Loans Act, quoted supra in part, and the rate of interest payable on them was fixed pursuant to that Act. Sub-head 3, of Section 92, " The borrowing of money on the sole credit of the province " authorizes the enacting of the Provincial Loans Act, which of necessity deals not only with the borrowing of money but also the repayment of same and the rate of interest payable. The Act under consideration is in effect an amendment of the Provincial Loans Act and prima facie within sub-head 3 of Section 92. It is also clearly within sub-head 13, " Property and civil rights in the province ", as it deals with a matter of contract and the rights under the contract.

In *Citizens Insurance Company* v. *Parsons*, 7 A. C. p. 96, Sir Montague Smith said at page 110 referring to the words " property and civil rights " :

> " . . . 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 becomes obvious as soon as an attempt is made to construe the general terms in which the classes of subjects in sections 91 and 92 are described, that both sections and the other parts of the Act must be looked at to ascertain whether language of a general nature must not by necessary implication or reasonable intendment be modified and limited. In looking at section 91, it will be found not only that there is no class including, generally, contracts and the rights arising from them, but that one class of contracts is mentioned and enumerated, viz., ' 18, bills of exchange and promissory notes ', which it would have been unnecessary to specify if authority over all contracts and the rights arising from them had belonged to the dominion parliament ".

Section 3 (2) of the Act, which limits the right of recovery, is clearly a civil right within the Province and would be authorized also by sub-head 14, of Section 92 " 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 these Courts ".

The Act deals only with a local and provincial matter, namely, provincial debts, and while they are payable outside the province, the Act deals with a subject matter under sub-head 16 " Generally all matters of a merely local or private nature in the province ".

*Rex* v. *Arcadia Coal Company Limited* (1932) 1 W.W.R., 771, 781, 791.

See also at *page* 782, quoting from the judgment of Viscount Haldane in the *Great West Saddlery Case* [1921] 2 A.C., 91.

Even if the right of Parliament to legislate as to interest enables it to legislate as to interest under contracts, generally, which is not admitted, it is submitted that legislation as to contracts of the Crown authorized by sub-head 3, of Section 92, must be construed as an exception from the general power to legislate as to interest, on the same basis as the exceptions mentioned by Viscount Haldane in the portion of his judgment quoted by McGillivray, J. A., in the above case.

See also *Allen* v. *Trusts and Guarantee Company*, (1937) 2 W.W.R. 257, 264.

*Hodge* v. *The Queen*, 9 A.C., 117, 130, 132

*Attorney General of Manitoba* v. *Manitoba License Holders Association* [1902] A.C., 73

*John Deere Plow Company* v. *Wharton* [1915] A.C., 330

Viscount Haldane says at page 339 :

" . . . 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 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 . . . "

*Attorney General for Canada* v. *Attorney General for British Columbia* [1930] A.C., 111

At page 118 Lord Tomlin states from previous decisions of the Board, four propositions as a guide to the interpretation of the British North America Act. The fourth of these is :

" (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 Railway of Canada* v. *Attorney General of Canada.*"

The last mentioned case will be found in [1907] A.C. 65. In this case the statute dealt with was an amendment to the Railway Act, which affected certain contracts of employees of railway companies within the jurisdiction

*In the Supreme Court of Alberta (Appellate Division).*

No. 9. Appellant's Factum—*continued.*

of the Dominion Parliament. The legislation was upheld, the test applied being whether the statute was truly ancillary to railway legislation.

In the *Fisheries case* supra Lord Tomlin stated the test to be whether the legislation is necessarily incidental to effective legislation by the Parliament of Canada.

See also *Attorney General of Ontario* v. *Attorney General for Canada* [1894] A.C. 189

*Spooner Oils Limited* v. *Turner Valley Conservation Board* (1932) 4 D.L.R., 750, 758 to 762; affirmed on this point (1933) S.C.R. 629, 648

The following words of McGillivray, J.A., indicate the test to be applied in determining whether the Act in question came under Section 91 or Section 92:

" The question now being considered then narrows down to this—is the subject of legislation a matter of unquestionable Canadian interest and importance; is it national in its scope and concern; does it relate to foreign trade or trading matters of inter-provincial concern, or is it on the other hand a matter which is essentially and primarily of private or local ' that is to say of provincial interest? ' I have come to the conclusion that the subject-matter of the legislation in question in its ' true nature and character ' is of provincial rather than of inter-provincial interest and importance and so I must hold that the legislation is not invalid as encroaching upon the Dominion's power to regulate trade and commerce."

See also *Ladore* v. *Bennett et al* (1938) 3 D. L. R., 212, 217, 220 (1938) O.R. 324

*Day* v. *City of Victoria* (1938) 3 W.W.R., 161, 179 to 180, 182 to 185

In both these cases statutes of Ontario and British Columbia respectively authorizing the refunding of debentures at (generally speaking) lower rates of interest were held intra vires the provincial legislatures as being in their substance acts relating to " property and civil rights within the Province " and " municipal institutions in the Province " and not ultra vires as dealing with interest or with civil rights outside the Province.

Sloan, J. A., said at page 185:

" . . . In this Act, then, one not relating exclusively to subject-matters within section 92, but one also in relation to interest? In my opinion, with respect, it is an Act in relation to subject-matters assigned exclusively under section 92 (8) (13) and is not one in relation to any subject-matter within the exclusive legislative competence of the Dominion.

It does not purport to be an Act relating generally to interest, and while some of the provisions contained therein affect interest as an incident in the effectuation of the general scheme of the enactment, nevertheless it cannot, in my opinion, be said to be an Act in relation

to interest: *Attorney General for Manitoba v. Manitoba Licence-holders' Association* [1902] A.C. 73.

To hold otherwise would be to imperil, without reason, many provincial statutes which contain references affecting interest incidental to the exercise of legislative powers assigned to the province under the appropriate heads of section 92 . . . "

See also *Rex* v. *Stanley* (1935) 3 W.W.R. 517, 528, 531

*O'Brien* v. *Royal George Company*, 16 A.L.R., 373, 375

*Rex* v. *Osjorm*, 22 A.L.R., 582, 584 to 586

*Regina* 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

There are many statutes and rules of Court in Alberta and other provinces affecting interest which have never been questioned and indeed could not be seriously questioned, such as the following:

The Money-Lenders Act, Revised Statutes of Ontario, 1937, Chapter 243, ss. 1 (a) and 3.

The Judicature Act, Revised Statutes of Ontario, 1937, Chapter 100, ss. 33, 34 and 35.

Ontario Rules of Court, 435, 568, 722, 723.

The Judicature Act, Revised Statutes of Alberta, 1922, Chapter 72, s. 37 (n).

The Partnership Act, Revised Statutes of Alberta, 1922, Chapter 155, Sec. 26 (c) and (d).

Alberta Rules of Court, 327, 663, 686.

See *Toronto Railway Company* v. *City of Toronto* [1906], A.C. 117.

Section 113 of the then Judicature Act of Ontario enacted that:

" interest shall be payable in all cases in which it is now payable by law or in which it has been usual for a jury to allow it."

Lord Macnaghten in construing this section said at page 121 of the report:

" . . . The result, therefore, seems to be that in all cases where, in the opinion of the Court, the payment of a just debt has been improperly withheld, and it seems to be fair and equitable that the party in default should make compensation by payment of interest, it is incumbent upon the Court to allow interest for such time and at such rate as the Court may think right . . ."

*Consolidated Distilleries* v. *The King* (1932) S.C.R. 419.

Duff, J. (now C.J.C.) said at page 423:

" . . . As to interest, I think we must be guided by the decision of the Judicial Committee in *Toronto Railway Company* v. *City of Toronto*. I am unable to agree with the learned President that the subject-matter of section 34 of the Ontario Judicature Act is matter of procedure. A number of titles of substantive law are dealt with in that Act, and I have no doubt that section 34 falls within that category . . . "

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Section 34 of the Act then in force read as follows :

" Interest shall be payable in all cases in which it is now payable by law, or in which it has been usual for a jury to allow it."

It is further submitted that the Act in question is within the power of the legislature and beyond that of Parliament by reason of the Royal prerogative. The Crown cannot be sued without its own consent. The procedure for obtaining that consent is set out in the Petition of Right Act, Revised Statutes of Alberta 1922, Chapter 94, and the combined effect of Sub-Sections (1) and (2) of Section 3, is to limit the granting of a fiat with respect to such debentures to the recovery of interest at the reduced rate. Parliament cannot compel the Crown in the right of the Province to allow itself to be sued. That is a matter, obviously, for the provincial legislature.

2. It is submitted that the Act in question is not within the substance of sub-head 19 " interest " of Section 91 of the British North America Act and that it is not legislation which Parliament could enact under said sub-head.

It is submitted that the authority of Parliament to legislate as to interest is limited to general legislation of national scope, legislation for the peace, order and good government of Canada, 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 statutes prohibiting excessive rates of interest.

The history of legislation in England and Canada 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).

The following pre-confederation statutes in Canada are also referred to as showing what was then included in legislation as to " Interest."

In 1811 was passed 51 George III, C. IX, found in Revised Statutes of Upper Canada, Vol. 1, p. 175. This Act provided the damages and interest to be paid on protested bills of exchange and notes of hand and further provided that it should not be lawful upon any contract to take directly or indirectly for loan of any moneys above the value of six pounds for the advance or forbearance of one hundred pounds for a year and that all bonds, contracts, etc., whereby a greater interest shall be reserved shall be void. It was also provided that every person who should directly or indirectly accept a higher rate of interest should forfeit treble of the value of the moneys, etc., lent.

This Act was repealed by Chapter 80 of the Statutes of Canada 1852–3, assented to March 24th, 1853. The recital to this Act read as follows:

> " Whereas it is expedient to abolish all prohibitions and penalties on the lending of money at any rate of interest whatsoever, and to enforce to a certain extent, and no further, all contracts to pay interest on money lent, and to amend and simplify the laws relating to the loan of money at interest."

Section II read as follows:

> " 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."

Section III avoids contracts as to excess of interest made payable under a contract in excess of six percent.

Section IV declares that the Act shall not apply to banks or other institutions mentioned who are authorized by law to lend or borrow money at a rate higher than six percent per annum.

The effect of Section II above quoted is to make clear that the penal provisions relating to usury, whether such provisions were in Imperial or Canadian Statutes, are no longer in force. The Section merely removes penalties and no legislation was necessary to enable persons to contract as they wished, subject, of course, to the limitations imposed by Section III. Certain of the English Usury Acts, enumerated supra, would be in force in Upper Canada prior to Confederation by virtue of 32 George III, U.C., C. 1 or 40 George III, U.C., C. 1. 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.*

In considering these statutes, it should be remembered that the Legislature which passed them had the widest powers to legislate and was not hampered by the division of powers later made by the British North America Act between the Parliament of Canada and the provinces.

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The next statute of the Province of Canada dealing with the subject of " Interest " was Chapter 85 of the Statutes of 1858. Section 1 of this Act repealed the third Section of the Act of 1853 and Section 2 read as follows :

> " 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."

Section 3 prohibited banks from stipulating for or exacting more than seven percent interest.

Section 4 prohibited banks from taking more than specified rates of percent as collection damages on negotiable instruments.

Section 5 provided that six percent per annum should continue to be the rate of interest in all cases where, by the agreement of the parties or by law, interest was payable and no rate had been fixed by the parties or by the law.

In the following year, 1859, the Statutes of Canada were consolidated. An Act respecting interest appears at page 682 of the Consolidation as Chapter 58. In this Consolidation the former Section 2 became Section 3 and the words " It shall be lawful " were omitted and the Section read as follows :

> " 3. 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 did not change the meaning of the Section it is submitted and the Section still means nothing more than that penalties are abolished, subject to the exception at the beginning of the Section.

See the Consolidation, C. 29, Section 8, which reads as follows :

> " 8. The said Consolidated Statutes shall not be held to operate as new laws, but shall be construed and have effect as a consolidation and as declaratory of the law as contained in the said Acts and parts of Acts so repealed and for which the said Consolidated Statutes are substituted."

A former Section was included as Section 9, which prohibited corporations or associations of persons not being a bank authorized to lend or borrow money prior to August 16th, 1858, from taking interest in excess of six percent per annum and declared void the contracts and in such cases imposed penalties in treble the amount of the moneys lent.

This was the legislation as to interest in force in the Province of Canada at the time of the passing of the British North America Act and it is submitted that the word " Interest " in Section 91 should be construed with reference to these provisions, which it is submitted, do not in any way interfere with the right of contract or the enforcement of contract except in the limited manner contained in the Act.

Section 3 quoted above was reproduced in practically the same form in the Revised Statutes of Canada 1886, C. 127, Section 1 of which read as follows :—

> " 1. 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 is how the Section still appears in the Revised Statutes of Canada 1927, Chapter 102, as Section 2

It is submitted that a perusal of these Statutes shows that pre-confederation legislation as to interest was confined to legislation as to usury or excessive rates of interest and as to the rate of interest on negotiable instruments and fixing a legal rate of interest where such is recoverable and there is no contract as to such rate.

It is further submitted that the power to legislate as to interest given by Section 91 (19) must be confined to legislation of a national or Dominion wide nature and which may be properly applicable to the Dominion as a whole and not interfering with individual contracts in a province except to the extent of prohibiting usurious interest and providing for interest on " bills of exchange and promissory notes " Section 91 (18). In other words the legislation should, to use the words at the beginning of Section 91, be " laws for the peace order and good government of Canada in relation to all matters not coming within the classes of subjects by this Act assigned exclusively to the legislatures of the provinces."

See *Lynch* v *Canadian North-Westland Company*, 19 S.C.R., 204.

Sir W. J. Ritchie, C.J., says at page 207 :

> ". . . . It is obvious that the matter of interest which was intended to be dealt with by the Dominion Parliament was in connection with debts originating in contract, and that it was never intended in any way to conflict with the right of the local legislature to deal with municipal institutions in the matter of assessments or taxation, either in the manner or extent to which the local legislature should authorize such assessments to be made, but the intention was to prevent individuals under certain circumstances from contracting for more than a certain rate of interest, and fixing a certain rate when interest was payable by law without a rate having been named. . . "

Sir W. J. Ritchie, C.J., says at page 211 :

> ". . . The legislature has vested in the municipality the power to impose taxes, and if they have acted within the power confided to them no court has a right to say that the amount imposed is too large or too small. But had it been specifically named as interest I am of opinion that it was an incident to the right of taxation vested in the municipal authority and, though more than the rate allowed by the Dominion statute in matters of contract, in no way

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in conflict with the authority secured to the Dominion Parliament over interest by the British North America Act, but must be read, consistently with that, as within the power given to the local legislature under its power to deal with municipal institutions. . . ."

See also Gwynne, J., (who dissented) at page 223.

Patterson, J , at page 225, says :

". . We find that article" (sub-head 19 of Section 91) "associated with others numbered from 14 to 21 (1), all of which relate to the regulation of the general commercial and financial system of the country at large. No 19 is ejusdem generis with the others and does not, in my judgment, include the matter of merely provincial concern with which we are now dealing This is a phase of the subject which it does not appear to me that we are required to consider exhaustively at present . . ."

See also Lefroy's Canada's Federal System, pages 274 to 277.

See also note in Lefroy's Legislative Power in Canada, page 389, where the following occurs :

". . . . 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.' . . ."

It has been held in many cases that the right to legislate as to "Regulation of Trade and Commerce" must be exercised with respect to matters of national or interprovincial importance and that Parliament cannot legislate so as to regulate individual trades within a province or to regulate civil rights in the provinces. It is submitted, Parliament cannot legislate as to interest so as to interfere with contractual rights in the provinces except as indicated supra.

See *City of Montreal* v. *Montreal Street Railway* (1912), A. C. 333.

Lord Atkinson referring to the propositions laid down in the *Ontario Prohibition Case* (1896), A. C. 344, stated one of them as follows :

". . . And, lastly, that if the Parliament of Canada had authority to make laws applicable to the whole Dominion in relation to matters which in each province are substantially of local or private interest, upon the assumption that these matters also concern the peace, order and good government of the Dominion, there is hardly a subject upon which it might not legislate to the exclusion of Provincial Legislation. The same considerations appear to their Lord-

ships to apply to two of the matters enumerated in s. 91, namely the regulation of trade and commerce. Taken in their widest sense these words would authorize legislation by the Parliament of Canada in respect of several of the matters specifically enumerated in s. 92, and would seriously encroach upon the local autonomy of the province . . . They apparently established this, that the invasion of the rights of the province which the Railway Act and the Order of the Commissioners necessarily involve in respect of one of the matters enumerated in s. 92, namely, legislation touching local railways, cannot be justified on the ground that this Act and Order concern the peace, order and good government of Canada nor upon the ground that they deal with the regulation of trade and commerce . . . In other words, it must be shown that it is necessarily incidental to the exercise of control over the traffic of a federal railway, in respect of its giving an unjust preference to certain classes of its passengers or otherwise, that it should also have power to exercise control over the 'through' traffic of such a purely local thing as a provincial railway properly so called, if only it be connected with a federal railway . . . "

Lord Atkinson says at page 346:

" . . . In their Lordships' view this right and power is not necessarily incidental to the exercise by the Parliament of Canada of its undoubted jurisdiction and control over federal lines and is, therefore, they think, an unauthorized invasion of the rights of the Legislature of the Province of Ontario . . . "

See *The Board of Commerce Case* [1922], 1 A. C., 191.

Viscount Haldane said at page 197:

" . . . It is to the Legislatures of the Provinces that the regulation and restriction of their civil rights have in general been exclusively confided, and as to these the Provincial Legislatures possess quasi-sovereign authority. It can, therefore, be only under necessity in highly exceptional circumstances, such as cannot be assumed to exist in the present case, that the liberty of the inhabitants of the Provinces may be restricted by the Parliament of Canada, and that the Dominion can intervene in the interests of Canada as a whole in questions such as the present one. For, normally, the subject matter to be dealt with in the case would be one falling within s. 92. Nor do the words in s. 91, the " Regulation of trade and commerce," if taken by themselves, assist the present Dominion contention . . . "

*Toronto Electric Commissioners* v. *Snider* (1925), A. C. 396.

*Proprietary Articles Trade Association* v. *Attorney General for Canada* (1931), A. C. 310, 325.

Re *The Insurance Act of Canada* (1932), A. C. 41, 51.

*Attorney General for Canada* v. *Attorney General for Ontario*, (1937), A. C. 326, 367.

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*Attorney General for British Columbia* v. *Attorney General for Canada* (1937) A. C. 377, 386, 387.

It has been suggested that the decision of the Judicial Committee upholding the validity of Section 17 of The Farmers' Creditors Arrangement Act, Statutes of Canada 1934, Chapter 53, in *Attorney General for British Columbia* v. *Attorney General for Canada* (1937), A. C. 391, is against the Appellant herein. It is submitted that the decision has no application in this case and in any event the Act can be supported as legislation relating to " interest " as a matter of national importance and may be said to deal with excessive rates of interest and is somewhat similar to pre-confederation legislation. The Section reads as follows:

> " 17—(1) Notwithstanding the provisions of any other statute or law, whenever any rate of interest exceeding seven per centum is stipulated for in any mortgage of farm real estate, if any person liable to pay the mortgage tenders or pays to the person entitled to receive the money, the amount owing on such mortgage and interest to the time of payment, together with three months' further interest in lieu of notice, no interest shall after the expiry of three months period aforesaid be chargeable, payable or recoverable in respect of the said mortgage at any rate in excess of five per centum per annum.
>
> (2) The provisions of this section shall apply in the case of any mortgage heretofore or hereafter made and whether or not the principal sum is due and owing at the time such tender or payment is made."

As appears from the judgment of Lord Thankerton at page 397 the Appellant did not argue that the Section was ultra vires. The national aspect and the intention of this legislation is shown by the preamble, which reads as follows:

> " Whereas in view of the depressed state of agriculture the present indebtedness of many farmers is beyond their capacity to pay; and whereas it is essential in the interest of the Dominion to retain the farmers on the land as efficient producers and for such purpose it is necessary to provide means whereby compromises or rearrangements may be effected of debts of farmers who are unable to pay: Therefore His Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:—"

See Maxwell on the Interpretation of Statutes, 7th Edition, p. 37.

This Section may also be upheld as being ancillary to the main purpose of the Act. There is nothing inconsistent between such legislation as Section 17 dealing with excessive interest on mortgages throughout Canada and the Act under consideration dealing with the interest on certain specified Provincial securities.

3. It is further submitted that Section 2 of the Interest Act, if the meaning and effect of it is to enable a creditor to enforce collection from

his debtor of any interest which may have been agreed to irrespective of any provincial legislation, is *ultra vires* Parliament. There can be no doubt that the subject matter of the Section is *prima facie* within one or other of the following sub-heads of Section 92: (13), (14) and (16). Contracts and the right of enforcement of same are civil rights within the Province. It is within the legislative competence of the Province under both sub-heads (13) and (14) to say what remedies in the Court and otherwise persons entering into contracts may have. Citizens of a province enjoy their civil rights without the aid of Dominion legislation. Section 2 cannot be supported, it is submitted, as in pith and substance " Interest " legislation, nor can it be said to be necessarily incidental to legislation properly relating to interest.

The Interest Act provides that where interest is payable by agreement of parties or by law and no rate is fixed by such agreement or by law, the rate shall be five percent per annum. The Act has various provisions in Sections 6 to 9 to prevent excessive interest being charged while Section 10 deals with mortgages of real estate and permits a mortgagor after the mortgage has been in force for five years to pay the principal and interest due on a mortgage and three months further interest in lieu of notice, and thus escape further payment of interest. This Section is obviously of very doubtful validity. Sections 13, 14 and 15 deal with the interest on judgments and are also obviously of doubtful validity. It will be noted that the Sections apply only to the western provinces and to the North West Territories and the Yukon Territory. It is interesting to note that in the other five provinces the rate of interest on judgments is fixed by or under provincial statutes. For instance in Ontario, the rate is fixed by rule of Court No. 568, while Section 35 of the Judicature Act, Revised Statutes of Ontario 1937, Chapter 100, is in effect the same as Section 14 of the Interest Act.

It cannot be said, having in view the above provisions of the Interest Act, that Section 2 is " necessarily incidental to the effective legislation by the Parliament of the Dominion upon a subject of legislation expressly enumerated in Section 91 " to use the language of Lord Tomlin in the *Fisheries Case* [1930] A.C. 111 at page 118.

It is submitted, therefore, that Section 2, if given the meaning contended for by the Respondent, is *ultra vires* Parliament. The Section, however, it is submitted does not bear the meaning contended for the Respondent. Consideration of the history of Section 2, as set out *supra*, shows that it was first enacted to make lawful the stipulation for and exacting of interest at any rate, subject to certain exceptions. It was intended to make clear that the English Usury Acts and the pre-confederation Canadian Usury Acts were no longer in force. In the Consolidated Statutes of 1859 referred to *supra* the words " it shall be lawful " at the beginning of the Section were for the first time omitted but the meaning remained the same and, it is submitted, that Section 2 as it now appears in The Interest Act must be interpreted as if the words " without penalty " were inserted after the word " may " in the second

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line. It is further submitted that, whatever may be the meaning of Section 2 of The Interest Act, it does not apply to the Crown and, therefore, has no application to the case at bar, which is concerned only with obligations or contracts of the Crown in the right of the province.

See Interpretation Act, Revised Statutes of Canada 1927, Chapter 1, Section 16, which reads as follows :

> " 16. No provision or enactment in any Act shall affect, in any manner whatsoever, the rights of His Majesty, his heirs or successors, unless it is expressly stated therein that His Majesty shall be bound thereby."

It is submitted with respect, that the learned trial Judge misapprehended the argument of Counsel as to the application of this Section of the Interpretation Act. What the learned Judge said on this point will be found at page 8 of the Record. The argument referred to was directed to the point that there was no conflict between the Act under consideration and said Section 2 because the Section does not apply to the Crown. Whether Parliament could have made the Section applicable to the Crown in the right of the Province or not, it has not done so and Parliament has, in effect, declared by said Section 16 that Section 2 in the form in which it is, does not apply to the Crown. The principle at common law is stated in Maxwell on the Interpretation of Statutes, 7th Edition, at page 117, as follows :

> " . . . At all events, the Crown is not reached except by express words or by necessary implication in any case where it would be ousted of an existing prerogative or interest. It is presumed that the Legislature does not intend to deprive the Crown of any prerogative, right or property, unless it expresses its intention to do so in explicit terms, or makes the inference irresistible. Where, therefore, the language of the Statute is general and in its wide and natural sense would direct or take away any prerogative or right from the Crown, it is construed so as to exclude that effect . . . "

It will be noted that, at common law, the Crown may be reached by necessary implication. There is, however, no such qualification in the clear words of Section 16 quoted supra.

See *In Re Silver Bros. Limited*

*Attorney General for Quebec* v. *Attorney General for Canada* [1932] A.C. 514, 521, 522, 523 (foot), 524 (foot).

Lord Dunedin at page 524, dealing with the effect of Section 16 of the Interpretation Act, says :

> " . . . The effect of Section 16 is, so to speak, to add to the words of Section 17 ' (i.e. of the Dominion Act in question) ' but this priority shall not operate against any right in the Crown in a Province, where such right would be diminished by the priority being asserted against it. Whether the strict result of this view should be to give to the Province an over-riding priority need not be discussed. Counsel

for the Province did not ask for such relief; he was content that the two debts should rank pari passu . . . "

It is submitted, therefore, that if this is a case of a domain in which Provincial and Dominion legislation may overlap (the fourth proposition of Lord Tomlin in the Fisheries case) and Dominion legislation must prevail over provincial if the field is not clear and the legislations meet, the Dominion has not occupied the field by any legislation which overrides the provincial Act because Section 2 is either ultra vires or does not bear the meaning contended for and in any event does not apply to the Crown.

Sub-Section (2), of Section 3, of the Act under consideration is legislation authorized by both sub-heads 13 and 14 of Section 92 of the British North America Act. This Sub-Section reads as follows :—

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

It does not deal with "Interest" as such but with civil rights and the right of action of holders of securities and in the latter aspect comes within sub-head 14 of Section 92 "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 these Courts." This Section is in pith and substance within sub-heads 13 and 14 of Section 92. No action can be brought against the Crown except by virtue of the Petition of Right Act, Revised Statutes of Alberta 1922, Chapter 94. Sub-Section 2, of Section 3, above quoted in effect requires a suppliant under said Act confining his petition to a prayer for the recovery of interest at the reduced amount. In any event, it in effect prohibits the granting of a fiat for the recovery of interest at a higher rate than that prescribed by the Act. All this is obviously a matter for the legislature of a province and it is submitted that Sub-Section 2, quoted above, is clearly within the legislative competence of the legislature.

> See *McGregor* v. *Esquimalt and Nanaimo Railway Company* [1907] A.C. 462.

4. The learned trial Judge held that the Act in question is ultra vires not only for the reason it is interest legislation but for the further reason that the Suppliant's right is a civil right outside the Province and that the legislature cannot legislate in derogation of that right and in support of his decision cited *Royal Bank of Canada* v. *The King* [1913] A.C. 283. Record, page 9.

It is submitted that the above case has no application to the case at bar. The legislation in question there dealt with, property outside the Province, and purported to vest it in Crown and thus prevent the bondholders from enforcing payment of their claims in Montreal or New York. In the case at bar the bondholders have no claims which are enforceable anywhere but in Alberta and even there, only with the consent of the Crown. The basis of the decision in the Royal Bank is clearly shown in the judgment of

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Harvey, C.J.A., in *Credit Foncier* v. *Ross* (1937) 2 W.W.R. 353. At page 361 the learned Chief Justice said :

> " . . . Having found that the purpose for which the money has been advanced had failed, the committee held that the bondholders were entitled to recover it back and that they would have a right of action against the bank which could be enforced either in Quebec where the bank's head office was or in New York where there was a branch through which the money or rather the credit had passed. Though it seemed clear that the action could equally be brought here where it would be a civil right in the province the judgment held that as there was a civil right out of the province, the provincial Legislature had no authority to legislate in derogation of that right and the Act was therefore ultra vires . . . "

As pointed out above, in the case at bar, there is no civil right affected except a civil right in the province.

See also *Allen* v. *Trusts and Guarantee Company* (1937) 2 W. W. R. 257. Harvey, C. J. A., said at page 264 :

> " . . . The right of action 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 the provincial statute . . ."

This point has been settled adversely to the Respondent by the Appellate Courts of Ontario and British Columbia in the following cases cited supra :

*Ladore* v. *Bennett* (1938) 3 D.L.R. 212; (1938) O.R. 324
*Day* v. *City of Victoria* (1938) 3 W.W.R. 161.

It is further submitted that the " proper law of the contract " applicable to the " obligation " as distingished from the " performance " of the contracts in question herein is the law of Alberta and that even if a right of action existed in Toronto in the Province of Ontario, the Courts of Ontario would necessarily apply the law of Alberta in ascertaining the obligation and limit recovery to the reduced rate provided by the statute. The debentures in question were executed in Alberta by the Government of the Province under the authority of Orders of the Lieutenant Governor in Council. Record page 47. These Orders were made under the authority of Section 4 of the Provincial Loans Act, Revised Statutes of Alberta 1922, Chapter 42. The principal and interest are charged on and paid out of the general revenue fund. Section 4 (1) (a). Under these circumstances the proper law of the contract is the law of Alberta and it is immaterial that the debentures and interest coupons are payable in Toronto as well as in Edmonton. 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 *Delaney* v. *Great Western Milling Company* Limited, 22 C.L.R. 150 Isaacs, J., said at page 168 :

". . . Lord Esher M.R. in *Gibbs and Sons v. La Societe Industrielle et Commerciale des Metaux* said that where a contract is by law to be considered the contract of any particular country, the law of that country ' is the law which governs such contract; not merely with regard to its construction, but also with regard to all the conditions applicable to it as a contract.' His Lordship added :—' I say, ' applicable to it as a contract ' to exclude mere matters of procedure, which do not affect the contract as such, but relate merely to the procedure of the Court in which litigation may take place upon the contract . . . Therefore, if there be a bankruptcy law, or any other law of such country, by which a person who would otherwise be liable under the contract would be discharged, and the facts be such as to bring that law into operation, such law would be a law affecting the contract, and would be applicable to it in the country where the action is brought.' The learned Master of the Rolls does not suggest that the Bankruptcy Act which might discharge a party to a contract must be one existing at the time the contract is made, and his reference to ' any other law of such country ' must stand on the same footing as the bankruptcy law. If this is a correct interpretation of the learned Judge's words, it is an implicit recognition 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 as terms of their 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 to. It is the ' system of law ' which is submitted to, according to Lord Herschell L.C. and Lord Watson in *Hamlyn and Co. v. Talisker Distillery* . . ."

See also *Barcelo* v. *Electrolytic Zinc Company of Australasia*, 48 C.L.R. 391,436.

*Mount Albert Borough Council* v. *Australasian Temperance and General Mutual Life Assurance Society Limited* [1938] A.C. 224

Lord Wright says at page 238 :

". . . The debentures and the interest coupons in so far as they give a security on real property, namely, a portion of the local rate in New Zealand, are beyond question governed by the New Zealand law. The security can be enforced only in the Courts of New Zealand and in the manner provided by the Loans Act. It is not disputed that these rights are governed by New Zealand law. But in their Lordships' judgment it is equally true that the personal obligation to pay is a New Zealand contract, governed by New Zealand law. It seems impossible to sever this personal covenant from the mortgage provisions which secure it. Indeed, the whole tenor of the transaction is only consistent with its being governed by New Zealand law . . ."

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Lord Wright also says at page 240 :

" . . . It is well established in the law of England and of New Zealand, which in this respect follows it, that the proper law of a contract has to be first ascertained where a question of conflict of laws arises.

The proper law of the contract means that law which the English or other Court is to apply in determining the obligations under the contract. English law in deciding these matters has refused to treat as conclusive, rigid or arbitrary, criteria such as lex loci contractus or lex loci solutions, and has treated the matter as depending on the intention of the parties to be ascertained in each case on a consideration of the terms of the contract, the situation of the parties, and generally on all the surrounding facts. It may be that the parties have in terms in their agreement expressed what law they intend to govern, and in that case prima facie their intention will be effectuated by the Court. But in most cases they do not do so. The parties may not have thought of the matter at all. Then the Court has to impute an intention, or to determine for the parties what is the proper law which, as just and reasonable persons, they ought or would have intended if they had thought about the question when they made the contract. No doubt there are certain prima facie rules to which a Court in deciding on any particular contract may turn for assistance, but they are not conclusive. In this branch of law the particular rules can only be stated as prima facie presumptions. It is not necessary to cite authorities for these general principles. Sometimes their application involves difficulty; but not in this case. It has been already pointed out that there are, in their Lordships' opinion, such circumstances as lead to the inference that in the present case the proper law of the contract is the law of New Zealand, and accordingly that law should prima facie govern the rights and obligations to be enforced under the contract by a Court before which the matter comes, a fortiori a New Zealand Court . . ."

It is obvious that the proper law of the contract cannot be the place of performance. The holders of the debentures may require payment in any of the Provinces of Ontario, Quebec, Alberta or in New York. Record page 49.

It is, therefore, again submitted that the Act in question does not derogate from civil right outside the Province of Alberta.

It is submitted that the appeal should be allowed and the action dismissed.

Dated at the City of Edmonton, in the Province of Alberta, this 6th day of March, A.D. 1939.

W. S. GRAY
Counsel for the appellant.

**No. 10.**

**Respondent's Factum.**

*In the Supreme Court of Alberta (Appellate Division).*

No. 10. Respondent's Factum.

## I.

### Statement of Case.

1. This is an appeal by His Majesty the King from the Judgment of Shepherd J. in proceedings initiated by Petition of Right on behalf of the Independent Order of Foresters praying a declaration that the Provincial Securities Interest Act, 1937, being Chapter 13 of the Alberta Statutes of that year, is ultra vires the Legislature of Alberta.

2. The Petition was filed June 22nd, 1938, and endorsed by The Honourable the Attorney General for Alberta as required by the Statute January 13th, 1939.

## II.

### Facts.

3. The Suppliant in its Petition alleges that it is a body corporate incorporated under the provisions of the Independent Order of Foresters Consolidated Act, being Chapter 113 of the Statutes of Canada, 1913; that it has its Head Office at 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 of 1926; that at its Head Office it is the bearer bona fide holder and owner of Debentures of the Province of Alberta in the aggregate principal sum of $373,000.00, particulars of which are set out (p. 4); that the said Debentures were lawfully issued pursuant to the Provincial Loans Act and the respective Statutes of Alberta and Orders of the Lieutenant-Governor-in-Council authorizing such Debentures, and that prior to the issue of the said Debentures all formalities in respect of such issue had been fully complied with.

4. The Suppliant further alleges that by the terms of each of the said Debentures the Province of Alberta covenanted and promised to pay to the bearer thereof, at the times and places in the said Debentures provided, interest as in the said Debentures provided; that since the first day of June, 1936, as the interest coupons on the said Debentures matured the Suppliant presented the same for payment and payment was refused; that the sum of $36,245.00 in interest was as of the date of the Petition justly due and owing to the Suppliant, believed by it to be unpaid because of the provisions of the Provincial Securities Interest Act, 1937.

5. The Suppliant claims a declaration that the Provincial Securities Interest Act, 1937, being Chapter 13 of the Statutes of Alberta, 1937, is ultra vires the Legislature of the Province.

6. The defence admits the hereinbefore recited allegations, save that it denies that the Respondent was in breach of its covenant in refusing to make payment of the full amount of interest and says that the provisions with respect to interest in the said Bonds were amended by the provisions of Section 3 of the said Provincial Securities Interest Act, 1937, and that the

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Province of Alberta tendered to the Suppliant the amount of interest owing as modified by the provisions of the said Act. The defence then denies the default, or that the sum of $36,245.00 is justly due and owing by the Province and says that the amount owing is one-half of that amount, which sum was tendered to the Suppliant, which tender is admitted by the Suppliant. The defence further contends that the said Statute was validly enacted under the authority given to the Legislature of the Province of Alberta by Section 92 of the British North America Act.

7. The proceedings under this Petition of Right came on for trial before Shepherd J. presiding at a sittings of the Supreme Court of Alberta held at Edmonton, February 2nd, 1939. The only evidence led consisted of certain admissions agreed to by counsel for the parties to the following effect (p. 6), namely:

(*a*) That the interest coupons of the Debentures referred to in the Petition of Right were duly presented by the Suppliant for payment at the principal office of the Imperial Bank of Canada in Toronto, in the Province of Ontario, being one of the places where according to their tenor the principal and interest of the said Debentures are payable and that the payment of the full amount of such interest was refused, but that payment of one-half of such interest was tendered by the said Bank to the Suppliant and by the Suppliant refused;

(*b*) That the said Debentures were issued by the Province of Alberta prior to April 14th, 1937, and

(*c*) That the certified copy of the Order-in-Council, dated January 16th, 1922, found at page 44 of the Record, and the form of Bond, found at page 48 of the Record, are typical of the Orders-in-Council and form of Debenture involved in these proceedings.

8. On February 11th, 1939, the learned Trial Judge gave Judgment declaring the Statute *ultra vires* on the ground (p. 9):—

(*a*) That the Statute in question is interest legislation in its pith and substance;

(*b*) That the Statute constitutes an invalid interference with property and civil rights outside the Province of Alberta.

## III.

### Argument.

9. The Respondent contends that the Judgment is correct not only on the grounds upon which it is put by the learned Trial Judge but also on the ground that even assuming for the sake of argument that the Statute deals with property and civil rights within the Province or matters of a merely local or private nature there is a conflict between its provisions and those of Section 2 of the Interest Act, being Chapter 102 of the Revised Statutes of Canada 1927, and that the said Statute is *ultra vires* by reason of such conflict.

10. The Appellant, on the other hand, contends :—

(*a*) That the Statute is not interest in its pith and substance but comes within one of the following sub-sections of Section 92, namely :

(3) The Borrowing of money on the sole credit of the Province ;

(13) Property and Civil Rights in the Province ;

(14) The administration of justice in the Province ;

(16) Generally all matters of a merely local or private nature in the Province.

(*b*) That there is no conflict between Section 2 of The Interest Act and the Statute in question, and if there is the Crown in the right of the Province by reason of section 16 of The Interpretation Act (R.S.C. 1927, C.1) is not bound by that Section ;

(*c*) That the Statute in question is " a limited assertion of a prerogative which the Crown possessed prior to the passing of the said Act, namely, the right to refuse to consent or the right to give a limited consent to actions being brought against it."

(*d*) That the Statute in question deals not with civil rights outside Alberta but with a provincial contract ; that it merely alters the rate of interest payable under it and is, therefore, valid ;

(*e*) That the law applicable to the obligation under the contract is the law of Alberta ; that such law governs the said obligations irrespective of the place of payment of the said Debentures and that the only enforceable civil right of the Suppliant with respect to the said obligations is within Alberta ;

(*f*) That due effect was not given in the Judgment under review to the double aspect rule.

11. The history of the legislation under discussion is as follows :—

(*a*) At the Second Session of the Alberta Legislature in 1936, Chapter 11 was enacted, called The Provincial Securities Interest Act, purporting to make similar provision to that made by the Statute in question for the reduction of interest with respect to securities which word was defined to mean direct obligations of the Province as well as obligations guaranteed by it.

(*b*) Ives J. in a Judgment reported in 1937, 1 W.W.R. 414, declared this Statute to be ultra vires the Legislature of Alberta on two grounds, viz :—

(i) That its pith and substance was interest, a matter reserved for the Federal Parliament ;

(ii) That the Plaintiff's securities which were payable as the securities in question herein are payable in Toronto were not property and civil rights within Alberta ;

He thereupon gave judgment for the amount of the plaintiff's claim.

(*c*) Notice of Appeal from the said Judgment of Ives J. was filed but subsequently abandoned when the Statutes, Chapters 11,

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12 and 13 of 1937, were enacted, It is the last of these Statutes that is in question in these proceedings.

(*d*) The Suppliant in these proceedings thereupon brought an action claiming judgment for the amount of the previous judgment and claiming besides with respect to interest on the Suppliant's debentures which had subsequently accrued due. The defendant set up the said Chapters 11 and 12 which Statutes Ewing J. declared to be invalid, the latter in toto and the former so far as it related to the matters sued on. The grounds of the Judgment of Ewing J. (1937, 3 W.W.R. 424) with respect to Chapter 12 are two-fold :

(*a*) There is an interference with the exclusive power of the federal Parliament to legislate as to interest; and

(*b*) It conflicts with Section 2 of the Interest Act of Canada, being Chapter 102 of R.S.C. 1927;

(*e*) An appeal from this Judgment of Ewing J. was taken by the Defendant and is reported, 1938, 2 W.W.R. 194. That appeal was heard by a Court consisting of Harvey C.J.A., Ford J.A., Lunney J.A., McGillivray J.A. and Shepherd J. All the Judges with the exception of Ford J.A. were satisfied that the pith and substance of Chapter 12 of 1937 was interest. See Harvey C.J.A., with whom Lunney J.A. and Shepherd J. concurred, at p. 198. McGillivray J.A. at 210. Ford J.A. at p. 203 assumes Chapter 12 to be interest legislation and concludes that Chapter 11 bars the plaintiff's action.

12. The Respondent submits that the subject matter of the Provincial Securites Interest Act 1937 is interest, and that legislation with respect to this subject matter is restricted to the Parliament of Canada by Section 91 (19) of the British North America Act. Such restriction makes provincial legislation on this subject matter invalid whether or not the Dominion Parliament has legislated thereon.

The rules to be applied in determining this question are clearly set out in :

*A. G. Ont.* v. *Reciprocal Insurers*, [1924], A. C. at 337;
*A. G. Can.* v. *A. G. B.C.*, [1930] A. C. p. 111.

In the latter case Lord Tomlin, at p. 118, stated them 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 Section 91, is of paramount authority even though it trenches upon matters assigned to the provincial Legislature by Section 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 Section 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 Section 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 *Ont.* v. *Atty. Gen. Can.* [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 Section 91 (See *Atty. Gen. Ont.* v. *Atty. Gen. Can.* [1894] A.C. 189, and *Atty. Gen. Ont.* v. *Atty. Gen. Can.* (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 *G.T.Rly.* v. *A.G.Can.* [1907] A.C. 65).

In considering Lord Tomlin's first rule there should be kept in mind the commentary upon the concluding words of Section 91 of the B. N. A. Act by Lord Watson in *A.G. Ont.* v. *A.G. Can.* [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 16 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. Ont.* v. *A. G. Dom.* [1896] A.C. at 359;
*A. G. Dom.* v. *A. G. Ont.* [1898] A.C. at 715;
*The John Deere Case*, [1915] A.C. at 337.

The rule then is, it is submitted, that if the subject of the provincial legislation in its pith and substance, in its true character is within an enumerated head of Sec. 91, provincial legislation thereon is absolutely incompetent.

In dealing with this appeal consideration must be given to Lord Tomlin's fourth rule which is the " double aspect rule." It has been already indicated that, as an alternative argument, the Respondent contends that the conflict between the legislation under discussion and Section 2 of The Interest Act renders the provincial legislation to the extent of such conflict bad, and it is with respect to this argument that reference will be made to the " double aspect " rule.

In determining whether the Statute under discussion is in its pith and substance interest within Section 91 (19) of the British North America

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Act there must be determined at the outset the meaning of the word " interest " as used in Section 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, and 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 3rd 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 legislatures 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.

While Section 2 of the Interest Act, R.S.C. 1927, Ch. 102, is the one of particular and direct importance in this appeal, it will be useful to trace the origins along with it of other sections of the Act.

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

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

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

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

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

Section 8 (2) is the equivalent of Section 5 (2) R.S.A. 1886, Chapter 127 and is also found as Section 3 of Chapter 42, Statutes of Canada 1880.

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

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

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

Following Confederation the Parliament of Canada enacted Chapter 71 of 1873, and Chapter 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.

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 Chapter 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 Chapter 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 original of which is Chapter 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 Section 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 rate of interest or to usury it would have been very easy without offending 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; *Case* v. *Godin*, 7 W.W.R. 396.

In the *Bradburn case* at page 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."

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The decision rejects that contention.

*The Farmers Creditors Arrangement Act* case (supra) is, it is submitted, an approval by the Supreme Court and the Privy Council 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 Arrangment 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" after the notice referred to is given.

13. The Respondent further submits even if the legislation could be regarded, and it is submitted that it cannot be so regarded, as being not interest legislation but legislation within some head of Section 92, it is, it is submitted, equally bad because of its conflict with Section (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 provides (Section 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 apply 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. Can.* [1907] A.C. 65;
> *A.G. Man.* v. *Forbes* [1937] A.C. 260;
> 1937, 1 W.W.R. 167 (P.C.).

14. The Appellant contends with respect to the argument just submitted that Section 2 of The Interest Act does not bind the Crown in the right of the Province because of the provisions of Section 16 of The Inter-

pretation Act (R.S.C. 1927 c. 1). The Respondent submits that the Crown is bound by those provisions on the principles laid down in :

*Dominion Building Corporation Ltd.* v. *The King* [1933], A.C. 533; 1933—2 W.W.R. 417.

It is submitted that no right of the Crown is affected by the principle that the contracts of the Crown are subject to the rule of law.

15. Again on the hypothesis that the legislation can be said to be legislation in some aspects relating to property and civil rights in the province, it can have no application to the subject matter of these proceedings which are not " in the province." The securities in question in these proceedings are payable in Toronto, Montreal and New York, as well as in Edmonton. They 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, at 150, 151;
*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. Ont.* 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. Alta* [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.

All of which is respectfully submitted.

G. H. STEER,
of Counsel for the Respondent.

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## No. 11.

No. 11. Reasons for Judgment. Ford J.A. (concurred in by Tweedie and Howson JJ.A.).

### Reasons for Judgment.

FORD, J. A. (concurred in by TWEEDIE and HOWSON JJ.)

Whatever doubts may have been aroused by a consideration of the able argument of Mr. Gray, K.C., we are bound by the decisions of this Division in *Credit Foncier Franco-Canadien* vs. *Ross and Attorney General of Alberta* (1937) 2 W.W.R. 353; 1937 3 D.L.R. 365, and *Independent Order of Foresters* vs. *Lethbridge Northern Irrigation District et al* (1938) 2 W.W.R. 194; 1938 3 D.L.R. 89, to hold that the Act in question, The Provincial Securities Act 1937, ch. 13 of the Statutes of Alberta 1937, is ultra vires as

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being legislation in relation to " interest " within the meaning of Section 91 (19) of the B. N. A. Act.

As Counsel for both appellant and respondent expressed the hope that judgment would be delivered in time to permit of an appeal being ready to be heard by the Judicial Committee of the Privy Council at the same sittings as the appeal in the Lethbridge Northern case, I may be excused from discussing at any length the very interesting questions so ably discussed by Counsel.

It goes without saying that to hold that the proper law of the contracts, covered by the legislation in question, is that of the Province of Alberta would not assist the appellant once it is held that the legislation is ultra vires as being in relation to interest.

I find myself unable to distinguish the case at bar from the Lethbridge Northern case on the ground contended for that the act presently in question is intra vires as coming under sub-head 3 of Section 92 of the B.N.A. Act, " The borrowing of money in the sole credit of the Province."

There is doubtless a good deal to be said for the view that the act is one in relation to a matter of a merely local nature in the Province as dealing with contracts wholly subject to local law and therefore supportable under sub-head 13 of 92 " Property and civil rights in the province " and 16 " Generally all matters of a merely local or private nature in the province," and it may well be also as stated in Lefroy's Canada's Federal System at p. 278 " that the Dominion power as to interest will be ultimately found to be confined to fixing what shall be the legal rate of interest apart from express agreement or express provincial enactment, and the passing of usury laws, restricting the charging of interest throughout the Dominion, or any part thereof," but these views cannot now be given effect to in the face of the meaning given to the Dominion power to pass laws in relation to " interest " in the decisions mentioned. See in particular the *Credit Foncier case* at pp. 363-4. With Lefroy one may say, as he does at p. 277 : " We must await a Privy Council decision for a finally authoritative decisive interpretation of this Dominion power."

I would dismiss the appeal with costs.

" FRANK FORD," J.A.

I concur :

T. M. TWEEDIE

W. R. HOWSON

Edmonton, Alberta.

April 5th, 1939.

Attorney General for Canada not represented in the argument.

## No. 11A

## Formal Judgment.

*In the Supreme Court of Alberta (Appellate Division).*

No. 40A Formal Judgment, 5th April, 1939.

IN THE SUPREME COURT OF ALBERTA

APPELLATE DIVISION

AT THE COURT HOUSE IN THE CITY OF EDMONTON, ALBERTA, WEDNESDAY, THE FIFTH DAY OF APRIL, A.D. 1939 ;

Present :

The HONOURABLE MR. JUSTICE TWEEDIE ;

The HONOURABLE MR. JUSTICE FORD ;

The HONOURABLE MR. JUSTICE HOWSON.

Between :

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

and

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

The appeal of the above named Appellant from the Judgment of The Honourable Mr. Justice Shepherd pronounced in the above cause on the 11th day of February, 1939, having come on to be heard before this Court at Calgary, in the Province of Alberta, on the 23rd and 24th days of March, 1939, in the presence of Counsel as well for the Appellant as the Respondent, whereupon and upon hearing what was 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 Shepherd be and the same is affirmed ;

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

" R. P. WALLACE "
Registrar at Edmonton

Entered this 6th day of April, A.D. 1939.

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

Approved

" W. S. GRAY " for the Crown.

I certify that the foregoing is a true copy of the formal judgment of the Appellate Division of the Supreme Court of Alberta entered in the above mentioned cause.

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

No. 12.

*In the Supreme Court of Alberta (Appellate Division).*

No. 12. Order granting conditional leave to appeal to His Majesty in Council, 11th April, 1939.

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

IN THE SUPREME COURT OF ALBERTA

APPELLATE DIVISION

Between :

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

and

HIS MAJESTY THE KING, *Defendant (Appellant)*

Before

The HONOURABLE HORACE HARVEY, Chief Justice of Alberta.

The HONOURABLE MR. JUSTICE CLARKE.

The HONOURABLE MR. JUSTICE FORD.

Edmonton, Tuesday, April 11th, A.D. 1939

The application of the Defendant (Appellant) for leave to appeal to His Majesty in Council from the judgment of the Appellate Division of the Supreme Court of Alberta, dated the 5th day of April, A.D. 1939, and entered on the 6th day of April, A.D. 1939, coming on for hearing before this honourable court.

Upon hearing read the pleadings and proceedings herein, and upon hearing counsel for the Defendant (Appellant) as well as for the Suppliant (Respondent).

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

(*a*) That the Defendant (Appellant) do within one (1) month 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 dollars ($2,000.00) for the due prosecution of the appeal, and the payment of all such costs as may be payable to the Suppliant (Respondent) in the event of the Defendant (Appellant) 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 Defendant (Appellant) to pay the Suppliant's (Respondent's) costs of the appeal.

(*b*) That the Defendant (Appellant) within the period of one (1) month of the date hereof take the necessary steps for the purpose of procuring preparation of the Record and the dispatch thereof to England.

*In the Supreme Court of Alberta (Appellate Division).*

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.

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

No. 12. Order granting conditional leave to appeal to His Majesty in Council, 11th April, 1939—*continued.*

Entered this 12th day of April, A.D. 1939.

(Signed) R. P. WALLACE
C.S.C.
" V.M.W."

Approved

(Signed) MILNER STEER & Co,
Solicitor for Respondent.

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No. 13. Certificate of Registrar, 4th May, 1939.

**No. 13.**

**Certificate of Registrar.**

In pursuance of the Order of this Honourable Court dated the 11th day of April, A.D. 1939, and entered on the 12th day of April, A.D. 1939, granting the Defendant conditional leave to appeal to His Majesty in Council, I beg to report that I find as follows :

1. The Defendant has deposited in Court to the credit of the above action the sum of Two Thousand Dollars ($2,000.00) for the due prosecution of the appeal herein by the Defendant to His Majesty in Council from the judgment of this Honourable Court pronounced on the 5th day of April, A.D. 1939, and entered on the 6th day of April, A.D. 1939, and for the payment of all such costs as may be payable to the Suppliant (Respondent) in the event of the Defendant (Appellant) not obtaining an Order granting him final leave to appeal or of the appeal being dismissed for non-prosecution or of His Majesty in Council ordering the Defendant (Appellant) to pay the Suppliant (Respondent) costs of the appeal as the case may be.

2. The Defendant (Appellant) has up to the date hereof, done all acts as prescribed to enable him to complete the Record and the dispatch thereof to England not later than the 31st day of May, A.D. 1939.

All of which I humbly certify to this Honourable Court.

Dated at the City of Edmonton, in the Province of Alberta, this 4th day of May, A.D. 1939.

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

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## No. 14.

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

*In the Supreme Court of Alberta (Appellate Division).*

No. 14. Order granting final leave to appeal to His Majesty in Council, 8th May, 1939.

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

Between :

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

and

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

Before

The HONOURABLE CHIEF JUSTICE HARVEY ;
The HONOURABLE MR. JUSTICE CLARKE;
The HONOURABLE MR. JUSTICE HOWSON.

Dated at the Court House, City of Calgary, in the Province of Alberta, this 8th day of May, A.D. 1939.

Upon the application of counsel on behalf of the Defendant (Appellant) for a final Order for leave to appeal to His Majesty in Council from the judgment of this Honourable Court, pronounced the 5th day of April, A. D 1939, and entered on the 6th day of April, A.D. 1939;

And upon reading the Order granting conditional leave to appeal herein dated the 11th day of April, A.D. 1939, and entered on the 12th day of April, A.D. 1939, and the Certificate of the Registrar of this Court at Edmonton dated the 4th day of May, A.D. 1939, and it being shown that the preparation of a copy of the Record is being proceeded with :

And upon hearing Counsel for the Defendant (Appellant) and it appearing that Counsel for the Suppliant (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 Defendant (Appellant) herein;

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

This Court doth further Order that the Defendant (Appellant) 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 31st day of May, A.D. 1939.

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

Entered this 12th day of May, A.D. 1939.

(Signed) R. P. WALLACE.
C.S.C. (seal)

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## No. 15.

### Registrar's Certificate, 18th May, 1939.

No. 15.

*(Not printed)*

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Exhibit.

# EXHIBIT

Order in Council of the Province of Alberta. 16th January, 1922.

O.C.1/22

**Order in Council of the Province of Alberta, Monday, January 16th, 1922, approved by His Honour the Lieutenant Governor.**

The Executive Council has had under consideration the report of the Honourable the Acting Provincial Treasurer dated January 16th, 1922, stating that:

Whereas by Chapter 3 of the Statutes of Alberta passed in the year 1921, it is enacted that it shall be lawful for the Lieutenant Governor in Council to raise by way of loan a sum of money not exceeding Three Million, Eight Hundred and Forty-six Thousand Dollars ($3,846,000.00) for any or all of the purposes therein named and on the terms and conditions therein set forth; and

Whereas no moneys have heretofore been raised by way of loan under the Statutory Authority aforesaid; and

Whereas it is advisable that the sum of Three Million, Eight Hundred and Forty-six Thousand Dollars ($3,846,000.00) be raised by way of loan under the Statutory Authority aforesaid, and that securities in the form of gold debentures be issued therefor under the provisions of Chapter 10 of the Statutes of Alberta, 1910 (Second Session) and amendments thereto; and

Whereas it is further advisable that provision be made whereby the said gold debentures may be registered; and

Whereas it is further advisable that a Sinking Fund be created to be applicable towards the redemption of the said gold debentures; and

Whereas it is further advisable that provision be made for the issuance of temporary debentures without coupons to a like amount of Three Million, Eight Hundred and Forty-six Thousand Dollars ($3,846,000.00) bearing a like interest, payable at the same places on the same terms and on the same days and maturing on the same date as the definitive debentures, until such time as the definitive debentures hereinafter referred to can be prepared;

Therefore, upon the recommendation of the Honourable The Acting Provincial Treasurer, the Executive Council advises that a loan be raised under the Statutory Authority aforesaid for the sum of Three Million, Eight Hundred and Forty-six Thousand Dollars ($3,846,000.00) by the issue and sale of gold debentures to the aggregate amount of Three Million, Eight Hundred and Forty-six Thousand Dollars ($3,846,000.00) in accordance with the provisions of the Statutory Authority aforesaid, such gold debentures to be issued in denominations of One Hundred Dollars ($100.00) or any multiple thereof, with coupons attached. The said gold debentures shall be dated as of the Second day of January A.D. 1922, and shall be payable on the First day of January A.D. 1947, each bearing interest from the First day of January A.D. 1922, at the rate of Five and one-half per centum (5½%)

per annum, payable half-yearly by coupons on the First day of January and the First day of July in each year, and ranking pari passu and without preference or priority one over another. The said gold debentures shall be in the form hereunto annexed marked " A " or to the like effect, varying such form according to the denominations of the respective gold debentures. The said gold debentures shall be payable in gold coin of or equivalent to the standard of weight and fineness fixed for gold coins on the Second day of January 1922, by the laws of the United States of America, principal and interest thereof being payable as set forth in the said form hereunto annexed marked " A."

Pending the preparation and delivery of the said debentures there shall be issued temporary debentures without coupons to a like amount of Three Million, Eight Hundred and Forty-six Thousand ($3,846,000.00) bearing a like interest, payable at the same places, on the same terms, on the same days and maturing on the same date as the said several definitive debentures, such temporary debentures being in the form hereto annexed marked " B." The said temporary debentures shall be exchanged for definitive debentures of an equal aggregate amount and the said temporary debentures shall be cancelled before or contemporaneously with such exchange.

The Executive Council further advises, upon the recommendation of the Honourable the Acting Provincial Treasurer that the said gold debentures be negotiable and pass by delivery unless registered for the time being in the name of the holder or holders thereof, in any of the several books kept for that purpose in the office of the Provincial Treasurer, Edmonton, Canada, or in the Head Office of the Imperial Bank of Canada, Toronto, Canada, or at the Bank of the Manhattan Company, New York, United States of America, and as to all gold debentures so registered that the person in whose name the same shall be registered be deemed the absolute owner thereof, but such registration may be changed as provided in such gold debentures and may be as to principal only.

The Executive Council further advises, upon the recommendation of the Honourable the Acting Provincial Treasurer, that a sinking Fund at the rate of at least one-half of one per centum ($\frac{1}{2}$ of 1%) of the said amount of Three Million, Eight Hundred and Forty-six Thousand Dollars ($3,846,000.00) be created annually and invested in bonds, debentures or other marketable securities of the Government of the Dominion of Canada, or any of the Provinces of Canada, or in securities of the University of Alberta guaranteed by the Province, and be applicable for the redemption of the said gold debentures;

The Executive Council further advises, upon the recommendation of the Honourable the Acting Provincial Treasurer, that the said several definitive debentures shall be sealed with the Great Seal of the Province of Alberta and the said several temporary debentures and the said several definitive debentures shall be signed on behalf of the Province of Alberta by the Honourable the Provincial Treasurer or the Deputy Provincial Treasurer and that the coupons attached to the said definitive debentures

Exhibit.

Order in Council of the Province of Alberta, 16th January, 1922—*continued.*

shall be executed by having affixed the engraved or lithographed signature of the Deputy Provincial Treasurer.

The Executive Council further advises, upon the recommendation of the Honourable the Acting Provincial Treasurer, that the said several temporary debentures and the said several definitive debentures shall be countersigned for identification by the Imperial Bank of Canada and unless so countersigned the same shall not be deemed to have been regularly issued and shall not be capable of negotiation or hypothecation.

Edmonton, June 19th, 1922.

Certified a true Copy

"JOHN D. HUNT"
Clerk of Executive Council.

(Text)

"A"

DOMINION OF CANADA

$1,000. GOVERNMENT OF THE PROVINCE OF ALBERTA $1,000.

ISSUE OF $3,846,000.00

FIVE AND ONE HALF PER CENT. TWENTY-FIVE YEAR GOLD DEBENTURES.

Number Number

Interest payable half-yearly on January 1st and July 1st.

Due January 1st, A.D. 1947.

This debenture is one of the above mentioned series of Gold Debentures ranking pari passu without preference or priority one over another, securing in all the principal sum of Three Million Eight Hundred and Forty-Six Thousand Dollars ($3,846,000.00) and interest thereon, issued under the authority of Chapter (10) of the Statutes of Alberta 1910 (Second Session) as amended, Chapter (3) of the Statutes of Alberta, 1921, and Order-in-Council No. 1 of the year 1922. Know all men by these presents that the Province of Alberta one of the Provinces of the Dominion of Canada will pay to the bearer hereof on the First day of January in the year of Our Lord One Thousand Nine Hundred and Forty-seven (A.D. 1947), the sum of

ONE THOUSAND DOLLARS ($1,000)

in Gold coin of or equivalent to the standard of fineness and weight fixed for gold coins at this date by the laws of the United States of America, at the Imperial Bank of Canada, in any of the Cities of Toronto, Montreal or Edmonton, in the Dominion of Canada aforesaid, or at the Bank of the Manhattan Company in the City of New York in the said United States of America, at the option of the holder, and will pay interest thereon from First January, 1922, at the rate of five and one half per centum per annum

Exhibit.

Order in Council of the Province of Alberta, 16th January, 1922—*continued.*

while the said sum remains unpaid; such interest to be payable half-yearly on the First day of January and the First day of July in each and every year during the currency hereof, at the like places and in the like money, at the option of the holder hereof on presentation of the interest coupons hereto annexed as the same respectively mature.

The amount represented by this Debenture is borrowed upon the credit of the Province of Alberta, under the Statutory authority aforesaid, and is by such Statutory Authority chargeable on the General Revenue Fund of the said Province.

All moneys invested in this Debenture and the interest thereon are by the said Statutory Authority exempt from Municipal Taxation in the said Province and are free from all Provincial taxes, succession duty, charges and impositions.

Dated at the City of Edmonton in the Province of Alberta aforesaid, this Second day of January, A.D. 1922.

Signed on behalf of the Province of Alberta under the Great Seal of the said Province.

Deputy Provincial Treasurer.

Countersigned for identification.

For Imperial Bank of Canada.

(Coupon) $27.50

The Province of Alberta will pay the bearer on the First day of July, A.D. 1922, at the Imperial Bank of Canada in any of the Cities of Toronto, Montreal or Edmonton, or at the office of the Bank of the Manhattan Company in the City of New York, at the option of the holder, twenty-seven 50/100 dollars in Gold, interest on Debenture No. issued under Order-in-Council No. 1 of the year A.D. 1922.

Coupon No. 1 W. V. Newson
Deputy Provincial Treasurer.

Dominion of Canada

Government of the Province of Alberta.

$1,000. Per 5½ Cent Twenty-five year Gold Debenture

Principal Due

1st January 1947 Interest payable 1st January and 1st July

Principal and Interest payable at the

Imperial Bank of Canada, Toronto, Montreal or Edmonton, Canada

or at the

Bank of the Manhattan Company, New York, U.S.A.

Notice: No writing on this Debenture except by authorized Registrar.

Exhibit.

Order in Council of the Province of Alberta, 16th January, 1922—*continued.*

PROVISION AS TO REGISTRATION.

It is provided by the within mentioned Order-in-Council that this Debenture is negotiable and shall pass by delivery unless registered for the time being in the name of the holder, in a book kept for that purpose in the office of the Provincial Treasurer in the City of Edmonton Alberta, and such registration evidenced by notation hereon. The person in whose name this Debenture is registered shall be deemed the absolute owner thereof, and no transfer thereof except entered in such book shall be valid, unless the last registration shall have been to Bearer. Such registration may be as to principal only and may be made at the Bank of the Manhattan Company, New York, or at the Head Office of the Imperial Bank of Canada, Toronto, Canada.

FORM TO BE USED ON REGISTRATION AS TO PRINCIPAL.

| Date of Registration. | Name of Registered Owner. | Signature of Registrar. |
|---|---|---|
| | | |

Certified a True Copy

"JOHN D. HYNT"
Clerk of Executive Council.

"B"

DOMINION OF CANADA

GOVERNMENT OF THE PROVINCE OF ALBERTA.

Issue of

$3,846,000 Five and one-half Per cent Temporary Twenty-five Year Gold Debentures.

3846 Temporary Debentures of $1,000 each numbered T0001 to T3846 inclusive.

Interest payable half-yearly on January 1st and July 1st.

| $1,000 | TEMPORARY DEBENTURE | $1,000 |
|---|---|---|
| Number | Due January 1st, A.D. 1947. | Number. |

This Debenture is one of the above mentioned series of Temporary Gold Debentures ranking pari passu without preference or priority one over another, securing in all the principal sum of Three Million Eight Hundred and Forty-six Thousand Dollars ($3,846,000.00) and interest thereon,

Exhibit.

Order in Council of the Province of Alberta, 16th January, 1922—*continued.*

issued under the authority of Chapter Ten (10) of the Statutes of Alberta 1910 (Second Session) as amended, Chapter Three (3) of the Statutes of Alberta 1921, and Order-in-Council No. 1 of the year 1922.

Know all men by these presents that the Province of Alberta, one of the Provinces of the Dominion of Canada will pay to the bearer hereof on the First day of January in the year of our Lord One Thousand Nine hundred and forty-seven (A.D. 1947) the sum of

ONE THOUSAND DOLLARS ($1,000).

in gold coin of or equivalent to the standard of weight and fineness fixed for gold coins at this date by the law of the United States of America, at the Imperial Bank of Canada in the Cities of Toronto, Montreal or Edmonton, in the Dominion of Canada, aforesaid, or at the Bank of the Manhattan Company in New York City, U.S.A. at the option of the holder, and will pay interest thereon from First January, 1922, at the rate of five and one-half per centum per annum, while the said sum remains unpaid; such interest to be payable half-yearly on the First days of January and July in each and every year during the currency hereof at the like places and in the like money, at the option of the holder hereof.

The amount represented by this Debenture is borrowed upon the credit of the Province of Alberta under the Statutory Authority aforesaid and is by such Statutory Authority chargeable on the General Revenue Fund of the said Province.

All moneys invested in this Debenture and the interest thereon are by the said Statutory Authority exempt from Municipal Taxation in the said Province, and are free from all Provincial Taxes, Succession Duty, Charges and Impositions.

This Debenture is issued as a Temporary Debenture and is exchangeable for a definitive debenture or debentures of the like aggregate amount, payable on the same date, bearing the same rate of interest, having interest coupons attached and issued under the authority hereinbefore mentioned.

DATED at the City of Edmonton, in the Province of Alberta aforesaid, this Second day of January A.D. 1922.

| | |
|---|---|
| Countersigned for Identification. | Signed on behalf of the Province of Alberta. |
| For Imperial Bank of Canada. | Deputy Provincial Treasurer. |

Certified a true copy

"JOHN D. HUNT"
Clerk of Executive Council.

In the Privy Council.

No. 45 of 193

ON APPEAL FROM THE SUPREME COUR
OF ALBERTA APPELLATE DIVISION.

BETWEEN

HIS MAJESTY THE KING
(*Defendant*) *Appellan*

AND

THE INDEPENDENT ORDER OF FORESTER
(A BODY CORPORATE) (*Suppliant*) *Respondent*

# RECORD OF PROCEEDINGS.

BLAKE & REDDEN,
17, Victoria Street,
S.W.1.
*for the Appellant.*

CHARLES RUSSELL & CO.,
37, Norfolk Street,
Strand, W.C.2,
*for the Respondent.*

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